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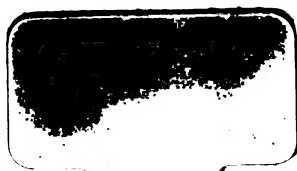




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**R E P O R T S**  
**FROM**  
**C O M M I T T E E S :**

*NINE VOLUMES.*

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— (1.) —

**ACCOUNTS, PUBLIC;  
ARMY (ROYAL ARTILLERY AND ENGINEERS,  
ARREARS OF PAY);  
MUTINY AND MARINE MUTINY ACTS;  
INDIAN NATIVE TROOPS (TRANSPORT  
AND EMPLOYMENT ABROAD).**

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**Session**

***17 January — 16 August 1878.***

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10  
**VOL. X.**

<sup>5</sup>1878.

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BR DOC 650

1877, Oct. 6.  
Summer fund.

# REPORTS FROM COMMITTEES:

1878.

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F I R S T  
R E P O R T  
FROM THE  
COMMITTEE  
OF  
P U B L I C A C C O U N T S;  
TOGETHER WITH THE  
PROCEEDINGS OF THE COMMITTEE,  
M I N U T E S O F E V I D E N C E,  
AND APPENDIX.

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*Ordered, by The House of Commons, to be Printed,*  
13 *March* 1878.

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*Monday, 18th February 1878.*

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Committee of Public Accounts nominated of—

Sir Walter Barttelot.  
 Lord Frederick Cavendish.  
 Mr. Cubitt.  
 Lord Eslington.  
 Mr. Goldney.  
 Mr. Thomson Hankey.

Sir John Lubbock.  
 Mr. O'Reilly.  
 Sir Charles Mills.  
 Mr. Seely.  
 Colonel Stanley.

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*Wednesday, 13th March 1878.*

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*Ordered, THAT the Committee have power to report their Observations, together with the Minutes of Evidence taken before them, from time to time, to the House.*

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# FIRST REPORT.

THE COMMITTEE of PUBLIC ACCOUNTS have made Progress in the Matters to them referred, and have agreed to the following FIRST REPORT:—

YOUR Committee have examined the Appropriation Accounts of the sums granted by Parliament for Civil Services, Class I. to VII., for the year ended 31st March 1877, together with the Reports of the Comptroller and Auditor General thereon.

## CIVIL SERVICES.

### CLASS I.

#### VOTE 2.—ROYAL PARKS AND PLEASURE GROUNDS.

1. There is a Net Deficit of 395 *l.* 8*s.* 5*d.* upon this Account, in part due to the expenditure of 3,375 *l.* upon works at Rotten Row, for which no provision has been made in the Vote. It was explained to your Committee, that this expenditure was incurred with the sanction of the Treasury, owing to the road having become exceedingly dangerous during the winter of 1876, and that it had been hoped that by the postponement of certain other expenditure, the work might have been completed in the course of two years, without taking a Special Vote for the purpose.

Q. 1—10.

#### VOTE 11.—COUNTY COURTS BUILDINGS.

2. A case has been submitted by the Treasury to the Law Officers of the Crown, on the point raised by the Comptroller and Auditor General in the third paragraph of his report, as to the legality of the payment of rent to the Corporation of Chesterfield, for the use of the market-hall as a county court and offices, but their opinion has not yet been received.

Q. 26.

#### VOTE 13.—SURVEYS OF THE UNITED KINGDOM.

3. The Committee of Public Accounts called attention last year to the long delay which occurred in the repayment by the Landed Estates Court, Ireland, of the cost of maps supplied by the Survey Department. The Treasury is stated to be in communication with the Judges of that Court, with a view to a speedier recovery of the sums so advanced. The balance outstanding, though still relatively large, has been materially reduced during the year.

#### VOTE 14.—HARBOURS, &c., UNDER THE BOARD OF TRADE.

4. There is a Net Deficit of 675 *l.* 1*s.* 6*d.* upon this Vote.

Appendix.

## VOTE 21.—RAMSGATE HARBOUR.

Q. 74—86.

5. The Comptroller and Auditor General calls attention to the amalgamation in this Account of the Harbour Fund, and of the Benefit Fund. It appears that the Estimate for the Vote was framed by the Board of Trade on the basis of merging the Benefit Fund in the Harbour Fund. It is provided under the 34th section of the Act 24 & 25 Vict. c. 47, that if the Benefit Fund be wound up, the capital of the Fund is to be employed in defraying its liabilities, and the Fund is then to be amalgamated with the Harbour Fund. Under the powers granted to the Board of Trade by this Act, pensions are no longer granted from the Benefit Fund, and no contributions are received in respect of it. The Benefit Fund has therefore been regarded as wound up. The estimate for the Vote was accordingly framed by the Board of Trade upon the basis of merging the two Funds. The Comptroller and Auditor General states in his Report that the conclusion of the Board of Trade as to the ability of the Benefit Fund to discharge the whole of its liabilities, appears to be fully warranted, although the annual interest of the capital of the Fund does not at present suffice to meet the pensions charged upon it. Your Committee, whilst not expressing an opinion against the course which has been adopted by the Board of Trade on account of its practical convenience, agree with the Comptroller and Auditor General in thinking it open to question whether that course is strictly in accordance with the provisions of the Acts.

## VOTE 23.—PUBLIC BUILDINGS, IRELAND.

Q. 87—92.

6. The Comptroller and Auditor General calls attention to the annual grant included in the expenditure upon the Sub-Head G. (Phoenix Park) of 39 *l.* for salaries and premiums in aid of a National School in the Phoenix Park. It appears that the Commissioners of Public Works are the patrons of the school in question, and that the sums paid by them are such as the Commissioners of National Education would expect the teachers of such a school to receive from local sources, if not otherwise provided. Your Committee are of opinion that if this expenditure be continued as a charge upon this Vote, it should be charged under a separate Sub-Head.

## VOTE 24.—LIGHTHOUSES ABROAD.

Q. 93—97.

7. The special attention of your Committee has been called to the very unsatisfactory character of the Estimates which were presented to Parliament for the Bird Rock Lighthouse, Bahamas. The Treasury refused to sanction the application of savings on other Sub-Heads in aid of the excess of 3,940 *l.* 18 *s.* 9 *d.* incurred, under Sub-Head A., for that work, until all the circumstances had been submitted to your Committee. It was explained by the Accounting Officer for the Vote, that the delay of more than four years in beginning the work after the funds had been provided by Parliament, had been due to causes beyond the control of the Board of Trade. The original Estimate, in 1866, of 10,000 *l.* for the entire work, appears to have been prepared without sufficient consideration of the nature of the proposed site, or of the delay and difficulties that would probably occur in building on such an exposed and isolated situation. A revised Estimate of 17,500 *l.* was framed in November 1875 by the present Inspector of the Works, within nine months of the fixing and lighting of the apparatus, when these causes of increased expenditure should have been fully ascertained and allowed for. This Estimate has, however, been exceeded by the sum of 7,214 *l.*, the total cost having been 24,714 *l.* The explanation furnished by the Inspector of this great error in his Estimate, is the delay of six months in the completion of the work, owing to bad weather, and the consequent large increase upon the wages and maintenance of the men employed. Your Committee cannot but think that the two Estimates were both prepared without due care and forethought by the officers appointed by the Board of Trade. Although the difficulty of controlling expenditure on works carried on at a great distance from this country must be great, the Board of Trade must be held responsible for the Estimates presented by it to Parliament, and it will be its duty to take all possible precautions against the repetition of such errors as those now under consideration. The outlay has, however, been incurred, and it does not appear to your Committee that

Q. 98—120.

that any advantage would now be gained by not following the ordinary course. They therefore recommend that the application of savings on other Sub-Heads in aid of the expenditure under Sub-Head A. should be sanctioned, and that the additional outlay of 50 *l.* in payment to Mr. Meadows for the use of his quarry (which is stated to be a perfectly fair charge), should be approved. The Net Deficit upon this Account will therefore be 3,299 *l.* 19 *s.* 7 *d.*, as stated in the Account.

Q. 121.

VOTE 25.—BRITISH EMBASSY HOUSES, AND CONSULAR AND LEGATION BUILDINGS.

8. The Comptroller and Auditor General calls attention in his Report on the Account of this Vote, and also in his Report on the Account of the Diplomatic Vote (Vote 1, Class V.), to the payment of the rent of the Embassy House at Berlin out of two distinct Votes. In the Estimate for Diplomatic Services, provision had been made for an allowance of 1,500 *l.* for house-rent to Her Majesty's Ambassador at Berlin. A house was leased on 1st July 1876, for the use of the Embassy, by the Board of Works at a rent of 3,000 *l.* a-year. The first quarter's rent was paid by the Ambassador out of the allowance provided for in the Diplomatic Vote; but it is pointed out by the Comptroller and Auditor General, and admitted by the Treasury, that the payment would have been more properly borne by the Office of Works, and should have been defrayed from this Vote.

Q. 122—124.

CLASS II.

VOTE 1.—HOUSE OF LORDS.

9. Your Committee concur in the opinion expressed by the Comptroller and Auditor General that it is desirable that the amount deducted from the Extra Receipts for the payment of a portion of the Superannuation Allowances should be shown in the Account.

Q. 133.

VOTE 3.—TREASURY.

10. It was explained to your Committee that the making of various arrangements in the Account branch of the Treasury had delayed the passing of the formal documents, but that the proper authority had now been furnished to the Comptroller and Auditor General with respect to the alterations referred to in the 3rd paragraph of his Report.

Q. 135—136.

11. The Comptroller and Auditor General calls attention to the sanction given by the Treasury to the transfer, in numerous cases throughout the Civil Service, of persons to the new class of Lower Division Clerks at their former rates of salary, which were in excess of the minimum fixed by the Order in Council of 12th February 1876. The Committee of Inquiry, presided over by Mr. Playfair, recommended that such transfer should be made in certain cases in consideration of special claims, but no provision was embodied in the Order in Council with respect to that recommendation. It was stated to your Committee that the alternative to the arrangement which had been made would have been to continue two classifications working side by side. The inconvenience of such a double classification is manifest. It was also stated that there was serious objection to the passing of a new Order in Council to meet a special case. Your Committee, however, agree with the Comptroller and Auditor General in his opinion that the general discretionary power of the Treasury to regulate salaries, does not extend to cases where salaries have been fixed by Order in Council or other document of superior authority. They therefore think it a matter of regret that the Order in Council was not framed so as to give the necessary discretionary power to the Treasury in the introduction of a new system. The Comptroller and Auditor General has duly called attention in his Reports upon the Accounts of the various Votes, to the instances in which the minimum fixed by the Order in Council has been thus exceeded under the authority of the Treasury. Your Committee, however, do not, for the reasons given above, recommend that any further steps be now taken in the matter, especially as the course adopted by the Treasury ensures the receipt by Parliament of the fullest information as to the manner in which, and the extent to which, the Treasury has exercised its discretion.

Q. 137—151.

## VOTE 6.—COLONIAL OFFICE.

12. There is a Net Deficit of 36 *l.* 12 *s.* 6 *d.* on this Account.

## VOTE 8.—BOARD OF TRADE.

13. Considerable complication has occurred in connection with this Vote, in consequence of the changes directed by the Merchant Shipping Act of 1876 in the mode of providing for the expenses of the Survey Branch. The Estimates were framed so as to provide for the payment of these charges out of the Mercantile Marine Fund, and an additional contribution of 8,000 *l.* was voted to that Fund in compensation for the service. It was, however, directed by the Merchant Shipping Act, that from 1st January 1877, the charge should be paid out of moneys voted by Parliament, and a Supplementary Vote was taken for the charge during the quarter ending 31st March 1877. In the arrangement which was sanctioned for the adjustment of Accounts between the Vote and the Mercantile Marine Fund, the unadjusted charges on the Vote for the year 1875-76, which were last year stated to be under the consideration of the Treasury, were included.

Q. 153.

14. The two Examiners of Masters and Mates, referred to in the 4th paragraph of the Report of the Comptroller and Auditor General are stated to belong to the Consultative Staff of the Board of Trade; and their duties are said not to be solely confined to examinations. Your Committee, however, agree that the present arrangement, though convenient in an administrative point of view, appears to involve a departure from the letter of the existing law, under which salaries and other expenses connected with examinations are chargeable to the Mercantile Marine Fund.

Q. 154—155.

15. Provision is made in the Merchant Shipping Bill to legalise the payment of the fees received for the examination of engineers, into the Exchequer, as suggested by the Comptroller and Auditor General.

Q. 156.

Q. 157—160.

16. The description of the Estimate under the Sub-Head for payments to the Customs has been amended, as recommended by the Comptroller and Auditor General. It was explained to your Committee that the function of the Consultative Staff of the Board of Trade, in respect of vessels detained on survey, is to secure uniformity of action, and that the expenses incurred in the discharge of that duty, scarcely come under the term "costs of and incidental to the detention and survey of the ship"; and that it was not therefore considered advisable to claim these expenses from the owner of the ship.

Q. 161—163.

17. It was stated to your Committee that the whole of the Survey Branch have now received Civil Service certificates, as required by the Order in Council of June 1870, with the exception of three persons who will also shortly receive their certificates.

Q. 192—193.

18. The question as to payments made under the Sub-Head "Law Charges," to salaried Procurators Fiscal in Scotland for services done under the direction of the Board of Trade, is still, as last year, the subject of communication between the Treasury and the Lord Advocate.

Q. 187.

Q. 352.

19. The Vouchers for the expenditure under Sub-Head I., "Law Charges," amounting to the sum of 24 *l.* 17 *s.*, have been examined and passed by the officers of the Exchequer and Audit Department at the Office of the Examiners of Criminal Accounts. The Net Surplus to be surrendered will therefore be 19,807 *l.* 8 *s.* 2 *d.*, as shown in the Account.

## VOTE 10.—CHARITY COMMISSION.

20. The Net Surplus to be surrendered will, for the reason stated by the Comptroller and Auditor General in the second paragraph of his Report, be 2,586 *l.* 13 *s.* 8 *d.*, instead of the sum of 2,586 *l.* 1 *s.* 6 *d.*, as shown in the Account.

**VOTE 21.—PAYMASTER GENERAL'S DEPARTMENT.**

21. The transfer of the clerk mentioned in the first paragraph of the Report of the Comptroller and Auditor General has been authorised by a Treasury Minute, and steps have been taken for giving a formal notice in the "London Gazette," required by the Order in Council of the 12th February 1876.

Q. 207.

**VOTE 25.—STATIONERY AND PRINTING.**

22. A statement of the stock in store on the 31st March 1877, has been prepared by the Exchequer and Audit Department from the books and figures provided by the Stationery Office. Your Committee regard this as a most valuable addition to the Report of the Comptroller and Auditor General.

Q. 208—210.

**VOTE 34.—HOUSEHOLD OF THE LORD LIEUTENANT OF IRELAND.**

23. There is a Net Deficit of 1 *l.* 6 *s.* 4 *d.* upon this Account.

**VOTE 26.—OFFICE OF WOODS, FORESTS, AND LAND REVENUES.**

24. It appears that in the view of the Treasury, the Order in Council of 19th August 1871, did not take away the power of the Treasury to make a fixed addition to the salary of such an officer as is referred to in the first paragraph of Report of the Comptroller and Auditor General, its object being to put an end to the system of engaging writers upon scales of regularly progressive payments. The point is, in the opinion of your Committee, not free from difficulty, and the Comptroller and Auditor General has rightly called attention to the increment of the salary mentioned, in the first paragraph of his Report. Your Committee do not think it necessary to remark further upon it, as the Treasury Letter of the 10th April 1877 admits that the Act was one of an exceptional kind, which it considers cannot wholly be avoided in a period of transition.

**VOTE 40.—OFFICE OF PUBLIC WORKS, IRELAND.**

25. Your Committee regret to find that the irregularity is still continued, by which a temporary messenger has been employed since 21st October 1874, contrary to the provisions of the Order in Council, without a certificate of qualification from the Civil Service Commissioners. It is stated that there is a difficulty in finding a person suitable for the post, who could obtain the necessary certificate, at the present rate of salary. Ample time, has, however, passed for making suitable arrangements, and if the irregularity is still continued in any future year, your Committee will be obliged to recommend that the payment of the salary should not be allowed as a charge against the Vote.

Q. 212.

Q. 356—357.

26. There is a Net Deficit upon the Account of 400 *l.* 16 *s.* 5 *d.*

**CLASS III.****VOTE 2.—CRIMINAL PROSECUTIONS, SHERIFF'S EXPENSES, &c.**

27. There is a Net Deficit of 419 *l.* 11 *s.* 10 *d.* upon this Account.

**VOTE 9.—LAND REGISTRY OFFICE.**

28. There is a Net Deficit of 23 *l.* 4 *s.* 10 *d.* upon this Account.

**VOTE 13.—CONVICT ESTABLISHMENTS IN ENGLAND AND THE COLONIES.**

29. In the Treasury Minute of 31st October 1877, certain objections are stated to the recommendations made by the Committee of Public Accounts last year, with respect to the mode of preparing the Estimate for this Vote, and directions are given that a foot-note should be appended to the Sub-Head

Appendix.  
Q. 216—220.



"Fine Fund," explaining its nature, and stating that the amount had been deducted from the Sub-Head "Pay and Allowances." The object which the Committee had in view in their recommendation last year, will be secured by these directions. There is, therefore, in their opinion, no longer a necessity for a change in the form of the Estimate.

Q. 221—222.

30. The Comptroller and Auditor General calls attention in his Report to payments included under certain Sub-Heads of this Vote on behalf of the Government of India for the maintenance of Indian convicts in Tasmania, and states objections to the course now pursued in relation to these advances, and to their recovery. Your Committee were informed that the Treasury has requested the Home Office to give directions for the discontinuance of the system of making these advances on behalf of the Indian Government. The questions raised by the Comptroller and Auditor General are thus determined.

#### VOTE 19.—COURTS OF LAW AND JUSTICE, SCOTLAND.

Q. 223—224.

31. The question submitted to the Treasury by the Comptroller and Auditor General with respect to the distinction observed by the Queen's and Lord Treasurer's Remembrancer, Scotland, in dealing with the fees and fines received in different Courts in Scotland, is still under consideration, as it involves a technical point with regard to the small branches of the hereditary revenue.

#### VOTE 20.—REGISTER HOUSE DEPARTMENTS, EDINBURGH.

32. There is a Net Deficit of 671 *l.* 13 *s.* 5 *d.* upon this Account.

#### VOTE 22.—LAW CHARGES AND CRIMINAL PROSECUTIONS, IRELAND.

Q. 229—230.  
See Public Accounts, Evidence, 1877.

Q. 209—210.

33. A sum of 341 *l.* 18 *s.* 6 *d.* has been charged under a new Sub-Head I., for expenses in connexion with the Phoenix Park riots of 1871. It was stated to your Committee last year, that it had not been considered expedient by the Treasury, to make special provision for this expenditure, as its future amount was very uncertain, and as the terms of Sub-Head E. were wide enough to cover such a service. It was also considered by the Treasury that the reasons which had led to the expenditure being specified in the Appropriation Accounts, had no immediate connexion with the principles on which an estimate is ordinarily formed.

34. There is a Net Deficit of 3,190 *l.* 7 *s.* 9 *d.* upon this Account.

#### VOTE 27.—COURT OF PROBATE, IRELAND.

Q. 235.

35. The surplus to be surrendered to the Exchequer will be 253 *l.* 5 *s.* 2 *d.* instead of the sum shown in the Account, in consequence of the admitted overpayment of 1 *l.* 5 *s.* mentioned in the Report of the Comptroller and Auditor General.

#### VOTE 32.—CONSTABULARY OF IRELAND.

36. The surplus to be surrendered to the Exchequer will be 31,261 *l.* 1 *s.* 8 *d.* instead of the sum shown in the Account, for the reason stated by the Comptroller and Auditor General in the 5th paragraph of his Report.

#### VOTE 34.—COUNTY PRISONS AND REFORMATORIES, IRELAND.

37. There is a Net Deficit of 869 *l.* 1 *s.* 11 *d.* upon this Account.

#### VOTE 36.—MISCELLANEOUS LEGAL CHARGES, IRELAND.

38. There is a Net Deficit of 1,469 *l.* 6 *s.* 4 *d.* upon this Account.

## CLASS IV.

## VOTE 1.—PUBLIC EDUCATION, ENGLAND.

39. The Committee of Public Accounts stated in their Report last year, that they considered it desirable that arrangements should be made without delay for a more detailed audit of this Account, at the Education Office, as had been suggested by the Comptroller and Auditor General. They have learnt with satisfaction that such an extended audit is being at present applied to the Accounts for the year 1877-78.

## VOTE 2.—SCIENCE AND ART DEPARTMENT.

40. The Committee of Public Accounts recommended in their Report last year, that in the case of a service which (like the Loan Exhibition of Science Apparatus at South Kensington) had not been provided for by a special Vote, the expenditure should be shown under a separate Sub-Head. In the Treasury Minute of 31st October 1877, it is shown, that owing to the present classification of the Estimate, there would be great difficulty in adopting this precise recommendation. The object which the Committee had in view has been secured by the statement which the Treasury directed should be appended to the Appropriation Account, and which shows the expenditure upon the Exhibition in question during the year 1876-77. In addition to the sum of 13,677 *l.* 10 *s.* 7 *d.*, so shown, it is stated that there was a previous payment of about 500 *l.* in 1875-76, on account of the Exhibition, and that there are still outstanding claims which will amount to about 1,000 *l.* The total cost of the Exhibition will thus probably exceed 15,000 *l.*; an expenditure which was incurred without the knowledge of Parliament or Treasury sanction. Explanations were made to your Committee showing the gradual manner in which the proportions, and consequently the expenses, of this Exhibition had grown; but they trust that the Minute issued by the Committee of Council on Education, dated 18th December 1876, will prevent the recurrence of these grave irregularities. Your Committee are of opinion that whenever it is proposed to hold an Exhibition, which will in any material degree increase the expenditure under the various Sub-Heads of the Vote, a note to that effect should be appended to the Estimates, for the information of Parliament.

Appendix.

Q. 239—331.

Q. 332—334.

## VOTE 4.—NATIONAL GALLERY.

41. There is a Net Deficit of 97 *l.* 10 *s.* 6 *d.* upon this Account.

## VOTE 14.—NATIONAL GALLERY, IRELAND.

42. An explanation has been furnished to your Committee of the circumstances which caused the conditions under which Treasury sanction had been given to the excess of expenditure under Sub-Head B., not to be complied with.

Q. 359.

43. For the reasons stated by the Comptroller and Auditor General in the second paragraph of his Report, the Net Deficit is 20 *l.* 17 *s.* 8 *d.*, instead of the sum of 21 *l.* 7 *s.* 8 *d.*, as shown in the Account.

## VOTE 16.—THE QUEEN'S UNIVERSITY IN IRELAND.

44. Treasury authority for the application of surpluses to excesses of expenditure on other Sub-Heads of the Grant has now been furnished to the Comptroller and Auditor General.

Q. 360.

## VOTE 17.—QUEEN'S COLLEGES, IRELAND.

45. There is a Net Deficit upon this Account of 780 *l.* 1 *s.* 11 *d.*

## CLASS V.

## VOTE 2.—CONSULAR SERVICES.

46. The Comptroller and Auditor General calls attention to the payment of an officer as Consul at Samoa for four months previous to his passing the required examination before the Civil Service Commissioners, whilst he was discharging duties at the Foreign Office. Treasury sanction was given to this payment on ascertaining that the Foreign Secretary considered that the case came within the terms of the notice in the "London Gazette" of 16th January 1872, relative to appointments made under urgent circumstances. The Comptroller and Auditor General, however, states that the officer, having passed his examination, did not sail for his post until some months afterwards. It was explained to your Committee that the officer was retained in England by the Foreign Office, awaiting his instructions, which were of an important and complicated character, and which depended upon the issue of an Order in Council.

Q. 346—348.

## VOTE 3.—GRANTS IN AID OF EXPENDITURE IN CERTAIN COLONIES.

47. The Comptroller and Auditor General has, in his Report, furnished all the information at his command with reference to the Accounts of the Colonies which receive a grant in aid of their revenues, and which he was directed by the Treasury Minute of 29th July 1870 to examine. Some of these Accounts, however, do not contain sufficient information. Your Committee have learned with satisfaction that the suggestion of the Comptroller and Auditor General for the adoption, in the Colonial Accounts, of the form now adopted in the Imperial Appropriation Accounts, has been accepted by the Secretary of the Colonies, so far as relates to the Colonies of which the Accounts remain subject to Imperial audit.

## VOTE 5.—COMMISSION FOR SUPPRESSION OF THE SLAVE TRADE.

48. No further Vouchers have been received by the Comptroller and Auditor General in support of the amounts charged under Sub-Heads C. and D., referred to in the second paragraph of his Report. It appears that these sums, amounting to 33,300 *l.*, were paid by the Government of India several years ago, and that the Imperial Government has only repaid its share of the expenditure. It is matter for surprise that in such circumstances the Governor of India should have been unable to produce satisfactory proofs in support of its claim for a whole year.

Your Committee think that before the time arrives for their final Report every effort should be made to obtain the requisite Vouchers, and in the meanwhile they recommend that the deficit of 42 *l.* 1 *s.* 3 *d.*, as presented by the Accounting Officer on the Account, should be voted.

## VOTE 6.—TONNAGE BOUNTIES, &amp;c., AND LIBERATED AFRICAN DEPARTMENT.

49. The Comptroller and Auditor General calls attention to the long period which has elapsed between the date of the payment made by the India Office and the date of the claim for repayment. Your Committee have had before them in former years similar cases of delay on the part of the India Office. They therefore express their opinion that it is most desirable that all claims for repayment should be made at the earliest date possible.

Q. 364—367.

## CLASS VI.

## VOTE 2.—MERCHANT SEAMEN'S FUND, PENSIONS, &amp;c.

50. Payments to the amount of 19 *l.* 9 *s.* were objected to by the Comptroller and Auditor General in the 1st paragraph of his Report; but satisfactory Vouchers have now been received by him of payments amounting to 12 *l.* 5 *s.* The surplus to be surrendered will therefore be 671 *l.* 11 *s.* 9 *d.*, instead of 664 *l.* 7 *s.* 9 *d.*, as shown in the Account.

Q. 368—371.

## VOTE 3.—RELIEF OF DISTRESSED BRITISH SAILORS ABROAD.

51. Vouchers have now been furnished to the Comptroller and Auditor General of payments to the amount of 14 *l.* 4 *s.* 4 *d.* in support of the charges mentioned in the first paragraph of the Report of the Comptroller and Auditor General. The surplus to be surrendered will therefore be the sum of 776 *l.* 8 *s.* 11 *d.*, as shown in the Account.

Q. 386—391.

## CLASS VII.

## VOTE 3.—MISCELLANEOUS EXPENSES.

52. There is a Net Deficit upon this Account of 421 *l.* 4 *s.* 3 *d.*

## PARIS INTERNATIONAL MARITIME EXHIBITION.

53. The Honorary Secretary of the Paris Maritime Exhibition has furnished to the Treasury Vouchers for payments to the amount of 57 *l.* 3 *s.* 10 *d.*, and has been allowed by the Treasury three months from 31st January in which to furnish further Vouchers in support of the expenditure of 135 *l.*, which was last year reported by your Committee as not properly chargeable against the Vote.

Q. 399—403.

## EXCHEQUER RECEIPTS.

54. Your Committee have not considered it expedient to report on any questions involving matters of principle in connection with Exchequer Extra Receipts, as they are informed that the whole of that subject is now under the consideration of a Treasury Departmental Committee, and that the Treasury hope to submit during the present Session a scheme dealing with it in its entirety.

Q. 350.  
Q. 27—33.  
Q. 47—50.  
Q. 170—177.

## EXTRA REMUNERATION.

55. The Comptroller and Auditor General has pointed out, as far as he has been able, the cases in which the accounting officers of the various Votes have failed to supply the information required by the Treasury, with respect to extra payments made to salaried or superannuated officers of the Crown, and has, as far as lay in his power, supplied that information. It was explained to your Committee that the accounting officers have sometimes great difficulty in ascertaining the fact, when extra remuneration is paid from another Vote. The clear directions laid down on this point in the Treasury Minute of 31st October 1877 will, it may be hoped, diminish this difficulty.

Q. 134.  
Q. 231—234.  
Q. 335—338.

Appendix.

13 March 1878.

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## PROCEEDINGS OF THE COMMITTEE.

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*Wednesday, 20th February 1878.*

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### MEMBERS PRESENT :

Sir Walter Barttelot. Lord Frederick Cavendish. Lord Eslington. Mr. Goldney. Mr. Thomson Hankey.		Sir John Lubbock. Mr. O'Reilly. Sir Charles Mills. Mr. Seely. Colonel Stanley.
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Lord FREDERICK CAVENDISH was called to the Chair.

The Committee deliberated.

[Adjourned till Wednesday next, at Two o'clock.]

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*Wednesday, 27th February 1878.*

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### MEMBERS PRESENT:

Lord FREDERICK CAVENDISH in the Chair.

Mr. Thomson Hankey. Sir Walter Barttelot. Sir Charles Mills. Colonel Stanley. Mr. Cubitt.		Mr. O'Reilly. Lord Eslington. Mr. Goldney. Mr. Seely.
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The Committee considered the Civil Service Appropriation Accounts, Classes I.—V.

The following Votes were postponed :—Class II., Vote 20 ; Class III., Vote 7 ; Class IV., Votes 14, 16.

Mr. *Reginald E. Welby*, Mr. *Charles L. Ryan*, Mr. *Algernon B. Mitford*, Mr. *John Mason*, Mr. *R. G. C. Hamilton*, Mr. *Norman MacLeod*, and Mr. *F. B. Alston*, were examined.

[Adjourned till Wednesday next, at Two o'clock.]

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*Wednesday, 6th March 1878.*

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### MEMBERS PRESENT :

Lord FREDERICK CAVENDISH in the Chair.

Mr. Thomson Hankey. Sir Walter Barttelot. Sir John Lubbock. Mr. O'Reilly. Lord Eslington.		Mr. Seely. Colonel Stanley. Sir Charles Mills. Mr. Goldney. Mr. Cubitt.
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The Committee considered the postponed Votes in the Civil Service Accounts, as well Classes V.—VII., and the Accounts of the Revenue Departments, and the Navy, and Greenwich Hospital and Schools, &c.

The

The following Votes were postponed, viz.: Civil Service Appropriation Accounts, Class V., Vote 5, and Class VI., Vote 3.

Mr. *Reginald E. Welby*, Mr. *Charles L. Ryan*, Mr. *Mansfield Parkyns*, Mr. *Robert G. C. Hamilton*, Mr. *John J. Weir*, Mr. *William Dick*, Mr. *Stevenson A. Blackwood*, and Mr. *Henry W. R. Walker*, were examined.

[Adjourned till Wednesday next, at Two o'clock.]

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*Wednesday, 13th March 1878.*

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MEMBERS PRESENT:

Lord FREDERICK CAVENDISH in the Chair.

Sir Walter Barttelot.  
Sir John Lubbock.  
Colonel Stanley.  
Mr. Cubitt.  
Lord Eslington.

Mr. Seely.  
Mr. Thomson Hankey.  
Mr. Goldney.  
Sir Charles Mills.

The Committee considered the postponed Votes 5 and 3, in Classes V. and VI. respectively of the Civil Service Appropriation Accounts, as well as the following Accounts, viz.: the Army Purchase Commission, Fortifications (Defences Loan, 1876-77), Consolidated Fund, and Woods, Forests, and Land Revenue.

Mr. *Reginald E. Welby*, Mr. *Charles L. Ryan*, Sir *Edward Lugard*, and Mr. *William J. White*, were examined.

DRAFT REPORT proposed by the *Chairman*, read the first and second time, and considered paragraph by paragraph, and *agreed to*, with Amendments.

Question, That this Report, as amended, be the First Report of the Committee to the House,—put, and *agreed to*.

*Ordered*, To Report, together with the Minutes of Evidence, and an Appendix.

LIST OF WITNESSES.

*Wednesday, 27th February 1878.*

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*Wednesday, 6th March 1878.*

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# MINUTES OF EVIDENCE.

Wednesday, 27th February 1878.

## MEMBERS PRESENT:

Lord Frederick Cavendish.  
Sir Walter Barttelot.  
Mr. Cubitt.  
Lord Eslington.  
Mr. Goldney.

Mr. Thomson Hankey.  
Sir Charles Mills.  
Mr. O'Reilly.  
Mr. Seely.  
Colonel Stanley.

LORD FREDERICK CAVENDISH, IN THE CHAIR.

## CIVIL SERVICE APPROPRIATION ACCOUNTS.

### CLASS I.

On Vote 2.—ROYAL PARKS AND PLEASURE GARDENS.

MR. REGINALD EARLE WELBY, C.B.; MR. CHARLES LISTER RYAN; and  
MR. ALGERNON BERTRAM MITFORD, called in; and Examined.

Lord Eslington.

¶ 1. (To Mr. Mitford.) It appears that a large sum which was not estimated for and not voted was expended upon Rotten Row, namely 3,375 l? —Yes.

2. Can you give any explanation why no estimate was furnished of that expenditure, and no Vote taken first?—We received the Treasury sanction to renew Rotten Row, and to pay for the renewal out of savings that we might effect upon the ordinary maintenance of the Park.

3. Then it was an expenditure distinctly incurred without the slightest cognizance by Parliament?—Yes, certainly it was.

4. Is that usual?—No it is very unusual; but the fact of the matter was that Rotten Row got into a very bad state, as your Lordship is probably aware.

5. And is in a very bad state now?—We hope that it will be perfect before long, but that is a matter of hope. That expenditure took place in the winter of 1876, when we had a very trying season. Nothing had been done to the foundation of Rotten Row for a great number of years, and the foundation had become rotten; and the rapidly succeeding frosts and thaws which occurred during that winter forced up a great deal of the rough material of which the bottom had been composed, and that practically made the road extremely dangerous. A great number of complaints were received upon the subject, and we reported the matter to the Treasury. We thought that by putting off certain little matters of expenditure here and there which could

0.9.

Lord Eslington—continued.

bear being postponed, we might do this work, extending it over two years, without taking a special Vote for the purpose. The Treasury concurred in that.

6. You thought you could squeeze out the cost of it by savings on other sub-heads?—Yes; by putting off things, very much as a man would do upon his own estate.

7. You admit that it was an exceptional thing to expend so large a sum without a Vote of Parliament?—Yes, entirely exceptional.

Sir Walter Barttelot.

8. Will any more money have to be spent upon Rotten Row?—The road is finished now, and I hope that the final payment will be made in this financial year.

9. Do you intend to ask for a Vote for it this year?—No; we have gone on with the sanction of the Treasury in the same way as we began.

10. You took no Vote for it last year?—No, we did not.

On Vote 6.

NEW HOME AND COLONIAL OFFICES.

Mr. Goldney.

11. With reference to the statement that the surplus of 10,747 l. 14 s. 11 d. shown on the account of this Vote for the year ended 31st March 1876 has been surrendered, I wish to ask whether that was the entire Vote?—That was the unexpended balance of the Vote.

A

12. It

Mr. Welby, c.b.,  
Mr. Ryan, and  
Mr. Mitford.

27 February 1878.



Mr. Welby, C.B.,  
Mr. Ryan, and  
Mr. Mitford.

27 February 1878.

# APPROPRIATION ACCOUNTS—Class I.

## Vote 6.—New Home and Colonial Offices— *continued.*

*Chairman.*

12. It relates to the Vote of the preceding year?—Yes.

On Vote 9.

## POST OFFICE AND INLAND REVENUE BUILDINGS.

13. On pages 18 and 19 there is a detailed estimate of New Works, and the expenditure upon them; I observe that the estimate was 90,136 *l.*, and the actual expenditure 61,877 *l.* 4 *s.* 10 *d.*; but on certain sub-heads there was a saving of 45,407 *l.* 11 *s.* 7 *d.*, while on certain other sub-heads there was an excess of 17,148 *l.* 16 *s.* 5 *d.*, making a total saving of 28,000 *l.* odd?—Yes.

14. The savings arose mainly, I presume, from works being deferred?—Yes.

15. Did the excesses arise from works being more rapidly completed than had been anticipated and estimated for, or from their cost being greater?—Generally from more work being done than had been anticipated.

16. At the bottom of page 19 you will see that there was a deduction of 15,920 *l.* made from the estimate for works which might not be carried out within the year?—Yes.

17. Would it not be possible to estimate that deduction a little more accurately?—I do not think so in the case of this particular Vote, for this reason, that we constantly get into difficulties in regard to the conveyance of land. I mean legal difficulties and others which we cannot foresee with reference to new sites.

18. Cannot you foresee them?—No, we cannot; that business is carried on by the Post Office.

19. And the Post Office does not provide you with sufficiently accurate information?—We always take it for granted that they are providing us with as accurate information as they can.

*Mr. Goldney.*

20. You rely very much upon the Post Office for acquiring the sites or purchasing the buildings they ask you to alter for them, and you need to know when the conveyancing will be completed before you can tell when you will begin your work upon those buildings?—Yes, and when we shall have possession of the sites on which they have told us that they will require new buildings.

21. I see that the statement is made in a note that the money voted was not expended on new post offices at Blackburn, Durham, Oxford, St. Helens, Reading, and Stockton, for which provision was made, because the sites had not been acquired?—Yes, that was, as I have stated, all in consequence of legal difficulties arising in the conveyance of the land.

*Mr. Seely.*

22. There was a sum of 17,452 *l.* 4 *s.* 10 *d.* expended more than granted for Maintenance and Repairs, and in the explanation under the head of B, it is said that this is partly owing "to the growing requirements of the Postal Service and partly to an advance in the contract prices." How can there be such growing requirements with regard to Maintenance and Repairs; I could have understood it with reference to new buildings?—

# APPROPRIATION ACCOUNTS—Class I.

## Vote 9.—Post Office and Inland Revenue Buildings—*continued.*

*Mr. Seely—continued.*

Under the head of Maintenance and Repairs there comes a good deal of work in connection with alterations of old buildings owing to the transfer of particular offices from one department to another, and so forth. There may be a variation, for instance, between the requirements of the Postal Department and the Telegraph Department.

23. Still, this is a large sum; it is the difference between 35,000 *l.* and 52,000 *l.*?—Yes, it is a very large sum, but it is not an expenditure that we can calculate beforehand with any great degree of accuracy, and a very large sum was deducted by the Treasury from the Estimate. We have a great many old buildings to deal with, and, as we point out in our explanation, we continually have requirements made upon us which we have not foreseen.

*Chairman.*

24. Some of them might stand over to another financial year, might they not?—Yes, some of those which are in the nature of repairs might.

*Lord Eslington.*

25. You have, in fact, to execute the behests of the Post Office in these matters?—Yes; it practically comes to that, but there always remains the ultimate appeal to the Treasury.

On Vote 11.

## COUNTY COURTS BUILDINGS.

*Chairman.*

26. (To Mr. Welby.) In paragraph 3 the Comptroller and Auditor General states that, in his opinion, the payment to the Corporation of Chesterfield, for the use of the market hall as a county court and offices, is contrary to the 24th section of the 13 & 14 Vict. c. 61, which expressly forbids the payment of any rent to a town for the use of a hall for a county court; have you any observation to make upon that point?—The Treasury do not dispute the strict correctness of the interpretation of the Statute as given by the Comptroller and Auditor General, but in this case they had taken over an agreement with a private person, and under the advice of their solicitor they held that that agreement, so long as it subsisted, was binding upon them. However, in view of the remarks of the Comptroller and Auditor General, they have thought it right to send a Case on the point to the law officers, and they have not yet obtained the opinion upon it.

On Vote 13.

## SURVEYS OF THE UNITED KINGDOM.

*Mr. Goldney.*

27. (To Mr. Mitford.) In the note under letter C, it is stated that "a considerable force was employed during the year on a special survey of the city of Edinburgh, the cost of which was defrayed by the local authorities"; do you pay all the money in the first instance?—We call upon the local authorities for payments as the work goes on.

28. Then

## APPROPRIATION ACCOUNTS—Class I.

Vote 13.—Surveys of the United Kingdom—*continued.*

Mr. Goldney—continued.

28. Then you pay it out of the Vote first?—No; we obtain advances from time to time.

29. You do not treat it as an extra receipt?—No.

30. (To Mr. Welby.) With regard to this payment by the city of Edinburgh, ought it to appear as an extra receipt or not?—It does not appear as an extra receipt. (Mr. Mitford.) The money is paid by them as the work goes on.

31. Then it does not pass through your hands?—Yes; it passes through our hands; they pay the money to us with which we pay the cost of the survey.

32. If the money comes into your hands, should it not be treated as an extra receipt?—They send us a cheque for the money, and we pay for the work with it.

33. Ought it not to appear in the accounts as an extra receipt?—No; I think it should not.

34. What check has the Treasury over it, or how can the Comptroller and Auditor General tell from this note whether there has been 200 *l.* or 2,000 *l.* paid?—I do not think that we have ever held that it was necessary that the Comp-

## APPROPRIATION ACCOUNTS—Class I.

Vote 13.—Surveys of the United Kingdom—*continued.*

Mr. Goldney—continued.

troller and Auditor General should interfere in the matter, because the City of Edinburgh are told beforehand what the cost of the re-survey of their city will be on such-and-such a scale, and if they agree to that, they pay for it. The accounts, however, are sent to the Comptroller, as are all other accounts for non-voted services.

35. It is part of the duty of your office to carry out the survey perfectly?—It is.

36. But you have an arrangement with them that they will contribute a certain proportion towards it; you doing the survey of the whole area of which their city is a section?—In the case of a re-survey, the whole cost is borne by the local authorities. When a survey of a town is made on a larger scale, or taken out of its turn, the town pays two-thirds of the cost, and this contribution is treated as an extra receipt. In the former case, the Vote having been already charged with the cost, it would be misleading to charge it so a second time.

37. Do they pay the whole expense of the survey which you make?—Only in the case of a re-survey.

Mr. Welby, c. s.,  
Mr. Styan, and  
Mr. Mitford.

27 February 1878.

Mr. JOHN MASON, called in; and Examined.

Mr. Goldney—continued.

38. CAN you inform the Committee on what principle these payments are made by the local authorities for surveys?—The City of Edinburgh pays a certain amount into the hands of the Office of Works; the accounts are kept separate for that in the books of the office; the local authorities make advances as the money is required. These accounts are sent with the others to the Audit Department, and they show precisely the amount which the re-survey has cost.

39. That is to say, the local authorities pay so much in aid of the expenditure upon a survey under this Vote?—They pay the whole of the expenditure; it is not charged to the Vote at all.

40. (To Mr. Mitford.) What obliges you to perform the duty if they pay the whole expense?—It is for their convenience that the arrangement is made.

Sir Walter Barttelot.

41. Is it not an arrangement which you make with all the towns in the kingdom that you will make the survey if they want it on a larger scale?—Yes.

Mr. Goldney.

42. I want to get at the facts about this; what I now understand is, that if a town applies to you to make a survey on a larger scale, you estimate the expenditure for them, and say, "On your paying that specific sum, we will do it"?—Yes; we charge the actual cost in the case of re-surveys.

43. As their employés, and not as the Government employés?—As Government employés told off for that special purpose.

0.9.

Mr. Goldney—continued.

44. Who fixes that amount?—The Director General of the survey.

45. (To Mr. Mason.) The money does not come to him, but to you?—It comes to the Office of Works; all the accounts are made up in the Office of Works.

46. In what account is that payment shown?—It stands as a distinct account. There is an account rendered by the Director of the Survey to the office. The cost of the survey is first made out, and the money imprested to the Director of the Survey. It is then reimbursed by the amount that the City of Edinburgh pay, they paying in advance, as I have said before. The account shows distinctly the whole of the expenses.

47. (To Mr. Mitford.) In what respect does the money so received differ from an extra receipt?—Only in principle.

48. How do you distinguish between them in principle?—I do not know how they are to be distinguished except in this sense; it is not treated as an extra receipt because it is kept in a distinct account, as I say.

49. I will take another item in the account; it appears that there has been a loss of 34 *l.* in consequence of the failure of one of the London agents for the sale of maps published by the Survey Department; the proceeds realised by the sale of maps are treated as extra receipts and paid over to the Exchequer?—Yes, but that is a very different case; this is a work which is done and paid for out of hand.

50. I admit that; but suppose these local authorities did not pay in one year, and you had done the work, what would happen then?—We should have to proceed against them; but I ought to repeat that in cases of re-survey we do not do

Mr. Mason.

A 2

Mr. Welby, C.B., Mr.  
Ryan, Mr. Mitford,  
and Mr. Mason.

27 February 1878.

# APPROPRIATION ACCOUNTS—Class I.

## Vote 13.—Surveys of the United Kingdom— *continued.*

Mr. Goldney—*continued.*

do the work unless we have got the money ; an imprest is given to the Director of Survey.

51. Suppose they did not pay until you had done the work, what then?—We should not go on working unless they paid; we have the money beforehand.

Mr. Seely.

52. How do you fix the amount?—That is done by the Director General of the Survey.

53. Is any portion of the office expenses included in it?—No, I do not think so.

54. Only the actual cost of the survey on the spot?—Only the actual cost of the labour and stores; supposing that the Director of the Survey had to start an office in the town, those office expenses would be borne by the City of Edinburgh, or whatever the town might be.

Chairman.

55. (To Mr. Welby.) Have you any observation to make upon this point?—By an arrangement sanctioned by the Treasury, an advance account is opened in the books of the Office of Works; in the case of surveys which are carried out for the benefit of particular towns, the expenditure on account of the survey is paid from that advance account, and the repayment from that town is also carried to that advance account; therefore there is no charge at all to the Vote in that case.

Mr. Seely.

56. But are not all the persons employed paid fixed salaries?—Yes.

57. Then how do you distinguish between the portion of the salaries of the persons employed which is not to be charged to the City of Edinburgh and the portion that is to be charged?—I think perhaps Mr. Mitford would answer that question best; but if 10 or 20 men are employed at Edinburgh, their fixed pay could be charged against the work of the survey of Edinburgh without much difficulty.

58. (To Mr. Mitford.) Would any portion of the pay of those who superintend those 10 or 20 men be charged to the City?—I think the divisional officers in charge have always been paid their fixed salaries without any reference to that, and the men have always been paid out of the money received from the local authorities.

59. Then in fact all the salaries of the superintendents and the higher officers of the Department are not included in the amount paid by the City?—No portion of the divisional officers is included in the charge made against the City of Edinburgh for this Survey.

Sir Walter Barttelot.

60. You would have to make a survey of the City of Edinburgh, supposing the City did not ask you to make it?—Yes.

# APPROPRIATION ACCOUNTS—Class I.

## Vote 13.—Surveys of the United Kingdom— *continued.*

Sir Walter Barttelot—*continued.*

61. On some scale?—Yes.

62. Of course, when you make a larger survey you do that exclusively for the benefit of the City?—Yes, entirely for the benefit of the City.

63. And therefore you charge them the amount which that actually costs you, but you do not charge them for the superintendence and the higher officers?—No; otherwise a portion of the salary of the Director General of the Survey himself would be charged upon them.

Mr. Seely.

64. Probably there is no extra cost to the country in consequence of making this survey on a larger scale, is there?—Yes; I should think so, certainly. I could not tell you exactly what the difference of expense would be. The Director General of the Survey would probably be the only person who could tell you that, but it is certainly more expensive to survey a city on a large scale than it is to survey it on a small scale.

65. It is more expensive, no doubt, but would the whole of the extra cost be charged to the City of Edinburgh, or only a portion of it?—This being a re-survey, the whole cost would be so charged.

66. There would be no increase of expense in respect of the salaries of the higher officers and superintendents in consequence of the scale being larger?—There would be no increase in the charge.

67. Then there is extra cost to the public?—We have no increase in the cost of the high staff of the survey on account of these large surveys.

Colonel Stanley.

68. To put it another way, the whole of the extra cost would arise upon the salaries of the subordinate staff, and that expense would be repaid by the town itself?—Yes.

Lord Eslington.

69. I find that the Comptroller and Auditor General says, in his Report, "In this Vote provision is made for the 'expense of maps for the Landed Estates Court, Ireland.'" It is impossible to ascertain, from looking down any of the sub-heads, what the amount of that expense is. I suppose it is spread over several of the sub-heads; is that so?—Yes, of course it must necessarily be so.

70. There was a balance outstanding on the 31st March 1877, of 12,846 l. 0s. 6 d.?—Yes.

71. The balance in the previous year was much larger; there was a reduction of something like 5,000 l., apparently?—Yes.

72. Is this expense estimated for?—Yes.

73. It is repaid as the maps are sold, is it not?—It is repaid as the estates are sold; it is an old arrangement made by the Treasury.

APPROPRIATION ACCOUNTS—Class I.—*continued.*

Mr. Welby, C.B., Mr. Ryan, Mr. Milford, and Mr. Mason.

27 February 1878.

## On Vote 21.—RAMSGATE HARBOUR.

Mr. ROBERT GEORGE CROOKSHANK HAMILTON, called in ; and Examined.

*Chairman.*

74. IN paragraph 7 of the Comptroller and Auditor General's Report he questions the regularity of having amalgamated the Benefit Fund with the Ramsgate Harbour Fund until the Benefit Fund is wound up; would it be possible now to wind up the Benefit Fund, as provided for in the 34th section of the 24 & 25 Vict. c. 47?—I think it may be considered to have been practically wound up, as no more pensions are granted, and the men who had contributed up to a certain time have had their contributions returned; there are at present only five annuitants, whose ages are these: 80, 71, 85, 84, and 52. The sum payable to them is something under 150*l.* a-year. The amount of stock which stands under the title of the Benefit Fund is about 3,000*l.*, and the income about 93*l.* a-year. We have always kept separate accounts of the Harbour Fund and the Benefit Fund until this year, and this was the first year in which we had to draw upon the grant-in-aid which Parliament had given to be used in the event of the local revenue not being sufficient to meet the expenditure. We had then a small balance in hand on account of the Benefit Fund; and, as we regarded the Benefit Fund and the Harbour Fund as practically one, we stated in our Report the amount that we required out of this grant-in-aid, namely, the sum which appears here, that is, 1,518*l.* 19*s.* 6*d.*, instead of a somewhat larger sum which we should have required if we had kept the Benefit Fund separate, and treated this as a deficiency on the Harbour Fund only. The Comptroller and Auditor General has not only certified this amount as the correct amount to be surrendered, but he has also certified as correct the Statutory Account which we presented. It was signed by him, I think, on the 10th of January 1878, and in that account the accounts of those two funds are amalgamated. We, therefore, held that it was simply a matter of representation, which was perfectly clear in the form certified by the Comptroller and Auditor General.

75. But as there is a provision in this Act for legally winding up this fund, would it not be better to wind it up legally?—It is wound up, practically.

Mr. Goldney.

76. Mr. Treherne says so in his letter?—Yes.

*Chairman.*

77. It is wound up practically, but not legally?—That is so.

78. Apparently the Comptroller and Auditor General thinks that the Act requires that the actual amount of the surplus or deficiency arising on the Benefit Fund should be ascertained before the accounts of the two funds could be amalgamated with advantage?—I think if that is the view of the Comptroller and Auditor General he ought not to have allowed us to take any part of the money of the Benefit Fund to reduce the grant we asked

*Chairman—continued.*

Parliament to make; but I should not hold that that was a correct view. We must pay these annuities as long as they last; they are dropping every year, and it would not be a good plan, I think, that we should sell out this particular amount of capital to make good these annual payments if they should be found to exceed the amount of the interest. It is much better to treat it as all one account, for it practically is one.

79. Could not the annuitants be transferred to the Harbour Fund?—That is what we have done.

80. (To Mr. Ryan.) I apprehend that the Comptroller and Auditor General does not object so much to what is done here, as the form of doing it?—It is practically so. As this is the first year in which the Vote has helped the Harbour Account, and the first year in which these accounts have been amalgamated, he did not think it right to pass the matter without drawing the attention of Parliament to it. He did not think that the course taken was one which did not justify him in giving his certificate either to the Appropriation Account or to the Statutory Account of Ramsgate Harbour; but still he thought that the circumstances were such as to require that he should draw attention to them.

Mr. Goldney.

81. (To Mr. Hamilton.) You say that what you have actually done is in accordance with the powers given in the 34th section of the 24 & 25 Vict. c. 47?—That is so. It is only in this sense not actually wound up, that we cannot tell exactly what we shall have to pay to the surviving annuitants.

Lord Eslington.

82. How do you come to regard the Harbour Fund and the Benefit Fund as, in your own words, one and the same thing. Surely they were two funds created for totally different purposes?—There are powers in the Act for winding up the Benefit Fund, and we hold that it is being wound up, and that they are practically one now.

83. Does the Act of Parliament embrace both funds?—Yes.

*Chairman.*

84. (To Mr. Ryan.) Can you suggest any manner in which this condition can be fulfilled, namely, that the actual amount of the surplus or deficiency arising on the Benefit Fund should be ascertained?—I think it must be ascertained in each year, and it will be only a question of our stating in our Report in another year, which we might do, the actual state of the Benefit Fund and of the Harbour Fund.

85. But if it were once for all ascertained that there was a surplus on the Benefit Fund to meet all possible claims upon it, then there would be no objection to the funds being amalgamated,

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## APPROPRIATION ACCOUNTS—Class I.

### Vote 21.—Ramsgate Harbour—*continued*.

*Chairman*—*continued*.

gamated, would there?—No, but we are not clear that that will be the case; our information does not enable us to express an opinion upon that.

86. If you were once satisfied upon that point, you would see no objection to the two funds being amalgamated?—No.

On Vote 23.

### PUBLIC BUILDINGS, IRELAND.

87. In paragraph 2 of his Report the Comptroller and Auditor General calls attention to a sum of 39 l. included in this Vote given in aid of a National School in the Phoenix Park; can you inform the Committee whether in similar cases the Woods and Forests Department, for instance, give a subscription in aid of schools?—Yes; the Woods and Forests Department do, but the nature of the Woods and Forests Account is different from this. The Woods and Forests Account is an account of the revenues of landed estates of which the Crown is the proprietor, and therefore the Department acts as any proprietor would in making grants for schools or churches or other similar objects. This is a Vote for Public Buildings, and it seemed an anomaly that under a Vote for a public building there should be included an expenditure for education.

88. Then the question is not so much of the propriety of the payment, but under what Vote it should come?—Yes.

*Mr. O'Reilly.*

89. Is there not another question; this is a private school, I suppose?—Yes.

90. Therefore the question might arise why should assistance be given to one private school more than to another?—The reason, I presume, why the Government made the grant was, that the school was mainly for the children of workmen and others employed in the Phoenix Park.

*Chairman.*

91. You are not ready at this moment to suggest any other Vote under which this expenditure might more appropriately come?—I think it might come under the Education Vote.

*Sir Walter Barttelot.*

92. That raises the question as to how a great many similar grants should be charged; for instance, the Admiralty makes grants to schools where they have look-out stations, and so forth, and I take it that those grants are made in the same sort of way as this is; but those grants do not come under the Education Vote at all?—At all events, if the expenditure is to be charged at all to such a Vote as that for "Public Buildings, Ireland," it ought to be charged under a separate sub-head. It hardly comes under the ordinary expenses of the Phoenix Park.

On Vote 24.

### LIGHTHOUSES ABROAD.

*Chairman.*

93. (To Mr. Hamilton.) In the report of the Comptroller and Auditor General on this Vote

## APPROPRIATION ACCOUNTS—Class I.

### Vote 24.—Lighthouses Abroad—*continued*.

*Chairman*—*continued*.

attention is called to the very large excess upon the Estimate for the Lighthouse on the Bird Rocks in the Bahamas; can you inform the Committee by whom the original estimate was prepared?—The original estimate was 10,000 l., and it was made in 1866. It was founded upon an estimate of Mr. Harvey, who was the Colonial Architect, and the Inspector of Lighthouses in the Bahamas. He was also a member of the Council there. He had been for several years in the Colony, and his designs and plans when the Board of Trade received them were submitted to Mr. Douglass, the Engineer-in-Chief of the Trinity House. He reported upon them, and made himself responsible for the amount of the estimate.

94. I suppose Mr. Harvey was appointed by the Board of Trade simply because he was a local government officer?—He held an office as Inspector of the Lighthouses at the Bahamas at that time.

95. Had he been originally appointed by the Board of Trade?—I think not, but I am not quite sure.

96. Under whose direction were the works carried on?—The works were carried out eventually under the direction of Mr. Whatley, then a lieutenant, now a captain, in the Royal Engineers. As I understand it, there are two points raised in the Treasury letter, which they refer to the Committee. The first is the great delay in commencing the work, and the second is as to the excess of the expenditure over the estimate. Perhaps it would be well that I should keep those two points separate, and explain to the Committee, as far as I can, the reasons for what has been done. The original Estimate of 10,000 l. was submitted to the Treasury in 1866. The first Vote taken was in 1868–69. We asked Parliament then for 5,000 l. That Vote was repeated in 1869–70, in 1870–71, and in 1871–72, and no part of any of those Votes was expended. The delay arose from several causes, of which the principal were these: Mr. Harvey, the engineer who designed the lighthouse, resigned in 1867, and returned to England. We appointed a Mr. Dixon as his successor; he reached the Colony in 1868. At the time when he arrived, many of the existing lighthouses had been extensively damaged by hurricanes, which are very common in that locality, and in the next year he was struck down with yellow fever, and came home on sick leave. In 1871 it was found that he could not go out again, and we asked the War Office if they could help us by nominating a Royal Engineer, who would do the work. They recommended Captain Whatley, who was then a lieutenant, and we placed him under instruction at the Trinity House, under Mr. Douglass, in order that he might get some knowledge of lighthouse work.

97. He was a lieutenant in the Royal Engineers?—Yes; he then went out to Nassau. We had at that time sent out an engineer from the Trinity House to erect a lighthouse on the Basses Rock at Ceylon, and he reported to us, that certain apparatus that had been some years before sent out to Ceylon might be made available for the Bird Rock lighthouse in the Bahamas. That,  
again,

APPROPRIATION ACCOUNTS—Class I.

Vote 24.—Lighthouses Abroad—continued.

Chairman—continued.

again, caused a certain amount of delay, because it was determined to use that apparatus. The result was, that it was not until 1873 that the lighthouse was commenced. I think it is clear that all these circumstances were entirely beyond the control of the Board of Trade. As regards the great excess of the expenditure over the estimate, I should point out that the estimate of 10,000 £ was based, among other things, upon the suitability of the stone of which the Bird Rock was composed, to be used for the purpose of the tower of the lighthouse to be erected on it, but after Mr. Whatley went out to the Bahamas, he reported that much better stone could be obtained in a neighbouring island, about four miles distant; that caused a very considerable increase of expense. Again, the Admiralty charts showed that there was good anchorage close to the rock, and that there would be no difficulty in landing stores on the sheltered side of the rock, but it turned out otherwise; whether the survey was originally wrong or not, I cannot say. I believe it was made a long time ago. The islands there are more or less coral and sandbanks, and an alteration in the soundings may have occurred. At all events, it is the fact now that you cannot land at all on the sheltered side of the rock. The consequence was, that the whole of the stores had to be landed on the exposed side of the rock, with very great difficulty, and some danger. That is really the main cause of the large excess which has occurred over the original estimate.

Lord Estlin.

98. The difference being as between 10,000 £ and 40,000 £, I think?—No; between 10,000 £ and 24,764 £.

99. The whole amount of the Votes is 40,000 £?—Yes, but a large portion of that amount was surrendered.

Chairman.

100. There was a revised estimate in 1875, which put the cost at between 17,000 £ and 18,000 £?—That was so.

101. Had not those causes of increase which you have just mentioned been discovered at that time?—They had been discovered at that time, but the Board of Trade could do no more than accept the estimate of their inspector out there, and those were his figures. I am sorry to say that his estimates have been very far from the mark in many instances.

102. By whom was the revised estimate made?—By the inspector out there, Mr. Whatley; we could do no more than accept it.

103. Is it impossible to let these works to be performed by contract?—Until this work was undertaken, the whole of the lighthouse masonry work at the Bahamas was done by contract, but it was done so badly, that it was determined to try whether it would not be better to use hired labour. So badly was the work done, that in one case a tower, which was of native stone, was reported to be something like 2½ feet out of the perpendicular.

104. I suppose it is perfectly impossible for you to exercise anything like an effective control over works carried on at that distance?—We can only exercise an effective control through the

APPROPRIATION ACCOUNTS—Class I.

Vote 24.—Lighthouses Abroad—continued.

Chairman—continued.

medium of the Governor and our inspector; it so happens that the present Governor at the Bahamas takes a very active interest in lighthouse work; in fact his salary has been raised by 200 £ a year in consideration of the work he performs in connection with the lighthouses. I can only say that we took the best steps we could; we asked the War Office to select an engineer for us to act as inspector, and we asked the Governor to look after the expenditure upon the work, and he did so; but it is a very difficult matter altogether, and the Board of Trade must necessarily be entirely dependent upon the Governor and the inspector for their control.

Mr. Goldney.

105. Then if it had not been for the Governor taking a considerable interest in the work the result might have been still more unsatisfactory?—Of course it is conceivable that it might have been more unsatisfactory, but I think the Board of Trade will adopt a different plan in future; we have tried building by contract, which has been a failure; we have tried building by hired labour, which has been very expensive. I think in future when a tower is to be built of stone or iron, the Board of Trade will have the whole of that work executed in this country, and then the only work left to be done in the Colony would be the mere setting of it up.

Chairman.

106. Would such a plan have been cheaper in the present case?—I cannot say; we should hope that it would be cheaper.

Colonel Stanley.

107. You say that your control depends upon the Governor and the inspector?—Yes.

108. Is this inspector, as a matter of fact, still in your service?—He is.

109. Has any intimation been conveyed to him that his estimates have been erroneous?—Yes, his attention has been called to the insufficiency of his estimate. The Board of Trade have no idea that the work has not been well done, but there is no doubt whatever that his estimates have been very wrong and wide of the mark indeed, and we have had nothing to guide us but his estimates.

110. Has he furnished any explanation of his estimates being so wrong?—His explanation is to this effect, that it was impossible to say, in the case of a work of this sort, which depended so much upon the weather, how long it would take; and of course it is time that causes the expense, because the wages of all these men were going on, and their victuals, also, all the time they were employed. The inspector said that he was out by about six months in the date when he hoped to complete the work, and that that was due mainly to more bad weather occurring than he had anticipated.

111. I understand that he took this work over from a previous inspector?—Yes, in this sense, that he took the designs and plans of a previous inspector, but he had everything to do with the work itself; no portion of the work had been commenced when he was appointed; he undertook the work from the very commencement, though

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## Vote 24.—Lighthouses Abroad—continued.

Colonel Stanley—continued.

though he was furnished with the plans of a previous inspector.

112. Was the estimate given to you previously to his appointment?—Yes; the estimate was given to us in 1867, and it was not until 1873 that we sent him out. The reasons for that delay I have already given.

113. What reports has he made to you with regard to the previous estimate; did he at once report it as insufficient?—He did not; it was not until nearly the end of his first year at Bird Rock that he reported that the cost would probably exceed the estimate, and it was not until we called his attention to the fact that the expenditure had exceeded the amount we had provided, that he furnished a revised estimate, and that was much under the mark.

114. As a matter of fact, then, we are to understand from you that the inspector who was on the spot, and on whom the work depended, was virtually corrected in that matter from home?—Yes.

Chairman.

115. With regard to the revised estimate of 1875, was that submitted to any of the local staff?—No; it could not be submitted to anyone with any usefulness, because it depended on the length of time that the inspector out there expected to employ so many men.

Lord Eslington.

116. I think you used the phrase that you borrowed Mr. Whatley, from the War Office, to carry out the estimates of the original engineer of the work?—I am not sure whether I used the phrase or not, but that was the fact. I may say that there was a Committee which sat shortly before Mr. Whatley was appointed, consisting of the Marquis of Lansdowne, General Sir Lintorn Simmons, Mr. Lingen, Mr. Farrer, and Colonel Keene. They strongly recommended that for every public work of an engineering description for which Royal Engineers were suitable, they ought to be employed, and it was to a certain extent acting upon this suggestion that we applied to the War Office to furnish us with a man.

117. The Board of Trade are charged with the conduct of works of this description all over the world?—Yes, from time to time.

118. Have you no engineers of your own?—No, we have none of our own; we do not require engineers of our own. Whenever we need to get professional advice on any point we should go to the Trinity House, and ask their engineer for it.

119. Then what you did in this particular case in applying to the War Office was exceptional?—This is the only Royal Engineer officer who holds an appointment of this kind under the Board of Trade, and he was appointed because the lighthouses in the Bahamas are sufficiently numerous to require an inspector.

120. The Bahamas are a Crown colony, I believe?—Yes.

Chairman.

121. What have you to say with regard to the payment of 50 l. for the use of a quarry for this lighthouse?—I do not see how it is possible to

# APPROPRIATION ACCOUNTS—Class I.

## Vote 24.—Lighthouses Abroad—continued.

Chairman—continued.

get out of that payment. The liability has been properly incurred, and it would be very hard to punish Mr. Meadows, the owner of the quarry, for the inspector having been out in his estimates. I think it is a perfectly fair charge.

On Vote 25.

## BRITISH EMBASSY HOUSES, AND CONSULAR AND LEGATION BUILDINGS.

122. (To Mr. Welby.) In paragraph 3 of the Report the Comptroller and Auditor General calls attention to the fact that provision was made in the Diplomatic Vote for the allowance for the house rent of the Berlin Embassy; but the account of the present Vote also includes a certain sum for that purpose. Can you explain to the Committee under what circumstances this expenditure appears under two Votes?—It is a common rule in the Diplomatic Service to give an allowance for house rent to a Minister; that takes the form of an allowance with which he may provide himself with house-room as he pleases, and so long as he receives that allowance it is plain that, like all other personal allowances, it comes out of the Diplomatic Vote. But if the Government acquires a house for the use of a Legation, then the Office of Works takes charge of it, and in the case of a lease they pay the rent. In this particular instance the Government took the house from, I think, the 1st of July, in the year 1876, and, therefore, the two systems came into play within the same year. In the first quarter of the year, the Minister was in receipt of a personal allowance, and, therefore, the sum paid to him was rightly charged, according to the principle which I have described, to the Diplomatic Vote. After that time the house belonged to the Government, and had to be paid for out of the Works Vote; but an exception comes in here. In the Estimate for the Diplomatic Vote a certain sum had been provided for the personal allowance of the Minister, under the impression, I believe, that that personal allowance would be received by him during the first half year. The new house came into the occupation of the Government earlier than had been expected, and the question arose how the apportionment was to be made between the two Votes. As a sum had been provided in the Diplomatic Vote, it was thought better, as an exceptional measure, to let the sum so provided be paid, and that when it was exhausted, the Board of Works should take the remainder of the charge.

123. It would be more regular, would it not, to charge to this Vote 25, all expenditure after the new arrangement began?—Yes, distinctly so.

124. Had any provision been made in this Vote for that expenditure?—There had been no provision made for it in this Vote.

Mr. Seely.

125. (To Mr. Mitford.) Will the sum of 21,180 l. granted for the British Embassy House at Rome, cover the whole amount that will be required?—It will cover the whole of the charge for the purchase.

126. Does

APPROPRIATION ACCOUNTS—Class I.

Vote 25.—British Embassy Houses, and Consular and Legation Buildings—continued.

Mr. Seely.—continued.

126. Does the charge for the purchase include land and house?—Yes, it is a freehold.

Mr. O'Reilly.

127. Is it in good condition now, or will much expenditure be required upon it?—We have got works going on there. You will find in the Estimates for the current year, and for the past year, that works have been going on there.

Mr. Seely.

128. Have you an estimate of what the extra cost will be?—Yes, 12,000 *l*.

129. In addition to the 21,180 *l*.?—Yes.

Lord Eslington.

130. When you undertake the purchase of costly houses abroad, or construct costly buildings abroad, do you send out an officer of your own to superintend the work, or do you entrust it to local persons?—We send out a person to negotiate a purchase of that magnitude.

131. And also with regard to construction or repairs?—In regard to the construction of Embassy Buildings Abroad we have now got attached to the staff of the office a special surveyor for those buildings. He goes out and visits those buildings, and confers with a local architect. It is generally more convenient to employ a local architect to supervise local workmen, and so forth, but the whole thing is done under the supervision of our surveyor, the plans being approved at the Office of Works.

132. That brings home the responsibility to the Office of Works in this country?—Yes.

CLASS II.

On Vote 1.—HOUSE OF LORDS OFFICES.

Chairman.

133. (To Mr. Welby.) In paragraph 4 of the Comptroller and Auditor General's Report, he states that in accordance with an arrangement between the Treasury and the House of Lords, a sum is deducted from the extra receipts, for payment of superannuation allowances in excess of the interest on the Invested Fee Fund; would it not be desirable that an account should be annually given along with the account of this Vote, showing how much has been deducted in this manner?—The Treasury agree with the Comptroller and Auditor General upon that point, and they will communicate with the House of Lords upon the subject.

On Vote 3.—TREASURY.

Colonel Stanley.

134. With reference to paragraph 2 in the Comptroller and Auditor General's Report, what explanation have you to give of the omission of a note under Sub-head A.?—The criticism of the Comptroller and Auditor General is based upon recommendations of the Committee in the last two or three years, viz., that where a public officer receives emoluments from more than one Vote, a note of that fact should be appended either to the Estimate or to the account of the

APPROPRIATION ACCOUNTS—Class II.

Vote 3.—Treasury—continued.

Colonel Stanley—continued.

Vote from which such officer is paid; of course it was the duty of the accounting officer of this Vote to collect this information so far as it was in his power to do so. The Committee will already have seen how very often that regulation is neglected, or, rather, is not observed. The fact of the matter is, that the accounting officer has very great difficulty in ascertaining the fact in all cases. In this particular case I am responsible for the omission. I do not account for the Privy Seal Vote; and when I drew up the account in this case and sent it into the Audit Office on behalf of the Treasury, I was not aware that any payment had been made out of the Privy Seal Vote for this purpose.

Chairman.

135. In paragraph 3, the Comptroller and Auditor General states that authority for the alteration of certain salaries was asked for last August, and that it had not been furnished to him when he made his report; has it yet been furnished to him?—Various arrangements had to be made in the Finance Branch of the Treasury which led to delay in passing the formal documents in this case. Minutes conveying the necessary authority have now been passed, and copies of them have been furnished to the Comptroller and Auditor General.

136. (To Mr. Ryan.) You have received them now?—We received them on the 23rd of this month.

137. (To Mr. Welby.) With respect to the writers mentioned in paragraph 4, who have been placed on the permanent establishment, none of those writers were in the permanent employment of the State previous to their transfer?—They all held the position of writers, and therefore they were not permanently employed.

138. Then engagements were terminable at short notice?—Yes.

139. Did the Order in Council of the 12th of February 1876 in any way embody the recommendation of the Committee presided over by Mr. Lyon Playfair which inquired into the case of these writers generally?—Perhaps I had better read the paragraph of that Order in Council which relates to the writers already in the service. Clause 12 runs as follows: "Appointments may be made exceptionally to the Lower Division of clerks from the body of writers serving before 4th June 1870 if thoroughly qualified, and from those subsequently registered by the Civil Service Commissioners, provided that the age of these latter did not exceed 30 years at the time of their being placed on the register; that at the date of this present Order in Council they have served as registered writers for a period of not less than three years; that they produce certificates from the head of the department in which they are serving; that it is desirable in the interest of the public service to retain and employ them in that same department; and that they prove their fitness by a supplementary examination."

140. No mention is made there of the rate of salary on which they shall be entered?—No, the next clause relates to the rate of salary: "The salaries of men clerks in the Lower Division shall commence

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## APPROPRIATION ACCOUNTS—Class II.

### Vote 3.—Treasury—continued.

*Chairman*—continued.

commence at 80 *l.*, and shall rise by triennial increments of 15 *l.* to 200 *l.*, provided that in any office in which a regular attendance of seven hours a day is required, the commencing salary may be 90 *l.*, and the maximum salary may be 250 *l.*"

141. But no provision is made in what you have read for admitting those writers at a higher rate of salary than the ordinary initial salary?—No.

*Lord Eslington.*

142. The Treasury seem to defend their action in this matter mainly by the recommendation of a Committee; but I presume you do not hold the recommendation of a Committee to be binding until it is embodied either in an Act of Parliament or in an Order in Council, do you?—If the noble Lord will look at the beginning of the extract from the Treasury letter, headed C., on page 72 of the Report of the Comptroller and Auditor General, he will see that the Treasury particularly state, "My Lords do not claim the power to vary salaries expressly limited by Statute, Order in Council, or Royal Warrant, for particular situations, or classes of situations, in Her Majesty's Service."

143. Then there does not appear to be any statutory power of increasing these salaries existing at present?—The Treasury were in a difficulty on the passing of the Order in Council, and they have read the Order in Council, together with the Report of the Commission, which it was intended to give effect to. They came to the conclusion that it was necessary for them to deal with a large number of persons already in the service, to whom allusion is made in that 12th clause of the Order in Council which I have just read, and they considered that they were giving full effect to the intention of the Order in Council, as read with the Report of the Commission upon which it was founded, in establishing as soon as possible the two classes of clerks, which both the Order in Council and the Commission contemplated. For that purpose it was necessary to deal with a large class of men who were already in the service. It was the opinion of the Treasury that they were not debarred from granting a special rate of salary in such cases as this on the ordinary authority of the Treasury, if it did not exceed the maximum limit of the Order in Council. Under ordinary circumstances, and in the absence of a Statute or Order in Council, the Treasury has, from time immemorial, had the right of fixing the number of established officers, and the pay to be assigned to those who are upon the establishment. In this particular case, in dealing with the large body of men who were in receipt of sums above the minimum fixed by the Order in Council, it was perfectly evident that they could hardly be brought into the new class at the minimum rate, and the Treasury, thinking that they were not debarred by the Order in Council from exercising their ordinary authority, allowed them to enter the new class at the salary which they were receiving. They saw an objection to passing another Order in Council, because there is a great difficulty in passing an Order in Council (which is rather a solemn act), to meet emergencies. If you do

## APPROPRIATION ACCOUNTS—Class II.

### Vote 3.—Treasury—continued.

*Lord Eslington*—continued.

pass an Order in Council in such cases, you must pass it in such a way as to leave a large discretion, and the Treasury thought, upon the whole, considering that since they were exercising a discretion, it was best to subject their discretion fully to Parliament, by exercising it in such a way, that the Comptroller and Auditor General would, in each case, report what they had done to the House of Commons. Those are the grounds upon which the Treasury acted.

144. Then I understand from your answer that they confined their discretionary power strictly within the limits of the minimum and the maximum fixed by the Order in Council?—Certainly.

145. (To Mr. Ryan.) Does the Comptroller and Auditor General agree in that view?—The Comptroller and Auditor General is bound by the strict rules and limitations contained in all documents which are imposed by a superior authority. He freely admits the power of the Treasury, in the absence of an Order in Council, by prescription, if not by Statute, to alter salaries and raise them, and fix establishments. But wherever any document of superior authority comes in, such as an Act of Parliament, an Order in Council, or a Royal Warrant, the Comptroller and Auditor General's view is, that the Treasury have no discretionary power other than that given in the document itself, and that if they give a salary in excess of the limits prescribed in any such document, it becomes his duty to bring the matter before Parliament.

*Mr. Thomson Hankey.*

146. And that they have done in this case?—That the Treasury have done, and that the Comptroller and Auditor General has also done.

*Lord Eslington.*

147. (To Mr. Welby.) This question and answer refers to a large number of cases running through the whole of these Votes: is not that so?—I believe the Comptroller and Auditor General has called attention to a very large number of cases all coming under that category.

*Chairman.*

148. (To Mr. Ryan.) I understand from the extract which was read from the Order in Council that the provision only applied to writers who were on the register before June 1870; are we to understand that all those cases to which the Comptroller and Auditor General has called our attention are cases of gentlemen who had been so placed on the register?—Speaking from memory, I think that the majority of cases are cases of writers who were not in the condition of being in the service before 1870, but that the amount of payments is the other way. The cost has been incurred more with reference to persons who were employed before 1870; but the figures which we took out for the purpose show that the numbers apply as largely to persons who were not within the definition of the Playfair Commission. The Committee will observe that the paragraph in the Report calls attention to the Treasury's contention that the Playfair Commission's Report gave them a warrant for the course adopted. It did give them a warrant for doing it

## APPROPRIATION ACCOUNTS—Class II.

Vote 3.—Treasury—*continued*.*Chairman—continued.*

it with reference to the writers appointed before 1870; but it did not give them a warrant for doing it with reference to the writers subsequently placed on the register.

149. (To Mr. *Welby*.) Can you explain why those more recent writers had been placed on the establishment at these higher rates of salary?—I can only give the reason which I gave before, namely, that the Treasury considered that they were not debarred from their discretion by the Order in Council. They admit the force of the question put by the Comptroller and Auditor General, but they say that, allowing due force to that question, still by the course they have adopted they have ensured the somewhat wide discretion which they have assumed coming before Parliament, and Parliament is therefore able to judge of the manner in which they have exercised it.

150. In all cases, I presume, the salary at which these gentlemen have entered the permanent service is below the maximum fixed by the Order in Council?—Quite so.

*Colonel Stanley.*

151. Admitting the theoretical objections to this arrangement, the alternative would be, would it not, that there would be two classifications working side by side?—Yes.

## On Vote 8.—BOARD OF TRADE.

*Lord Eslington.*

152. (To Mr. *Hamilton*.) When did the contribution from the Vote of Parliament to the Mercantile Marine Fund first begin?—It began in 1873. It was made in respect of the salaries of certain emigration officers whose salaries used to be paid out of the Public Vote, but who were transferred to the Mercantile Marine Fund.

*Chairman.*

153. In the first paragraph of the Report of the Comptroller and Auditor General, at its conclusion, it is stated that "It does not appear, however, that in the subsequent adjustments any account has been taken of the transactions in the last quarter of the year 1875-76, possibly on the ground stated by the accounting officer to the Board of Trade before the Committee of Public Accounts, 1877, viz., that charges equivalent to those thrown on the Vote 1875-76, contrary to statute, might be advanced as having been incurred improperly by the Mercantile Marine Fund;" is that the reason?—That is so; the continuance of this charge upon the Votes was one of the bases of settlement.

154. In paragraph 4 it is stated that "The salaries of two examiners of masters and mates have been charged to the Vote, whereas under the 418th section of the Shipping Act of 1854, salaries and other expenses connected with examinations are chargeable to the Mercantile Marine Fund;" and also in paragraph 5 it appears that certain fees are now paid to the Exchequer; but it appears doubtful whether these two arrangements are strictly legal; is it proposed to take any steps to legalise these arrangements?—It is as regards the fees for the examination of engineers, and that has been provided

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## APPROPRIATION ACCOUNTS—Class II.

Vote 8.—Board of Trade—*continued*.*Chairman—continued.*

for in the Merchant Shipping Bill now before the House. As regards the salaries of the examiners of masters and mates, it is true that the costs of the examinations which are conducted at all the various seaports of masters and mates for certificates of competency are charged to the Mercantile Marine Fund; but these two officers at head-quarters are much more in the nature of Head Quarters Staff; their duties are not solely confined to examination; they are a part of the Consultative Staff of the Board of Trade, and there necessarily is a good deal of work connected with the examinations which is done by the Head Quarters Staff, whose salaries are paid out of the Vote; what we said to the Treasury was that these officers form part of the Head Quarters Staff, and are as much officers of the Board of Trade itself as the professional officers of the Harbour and Marine Department; and the Treasury agreed in that view, and we now regard them as part of our Head Quarter Staff, the duties of which they do.

155. But if there is anything in the strict letter of the law which causes difficulty on that point, would it not be well to take advantage of the Bill now before Parliament, to remove that difficulty?—If this is a difficulty, it would apply equally to the duties of other men at the Board of Trade connected with these examinations.

156. In paragraph 7 the Comptroller and Auditor General states that the description of the Supplementary Estimate, under Sub-head C 1, is not sufficient to cover the expenses charged against that Sub-head; what observation have you to make on that?—The description has been amended by the addition of the words "et cætera" in the Estimates for this year.

157. In paragraph 8 it is stated that the expenses of the Consultative Staff of the Board of Trade are not recovered from the shipowner in cases of the detention and the survey of the ship. Have you any observations to make on that point?—I think nothing in addition to the letter which is given on page 92.

158. You consider that it would not be just to charge to the owner of the vessel expenses which are not incurred solely on his account?—I think the view rather is this, that one of the functions of the Consultative Staff is to secure uniformity of action on the part of the various officers stationed at different ports, and that under those circumstances it would not be advisable to claim their travelling expenses.

159. (To Mr. *Ryan*.) Would that explanation remove the objection of the Comptroller and Auditor General?—The Comptroller and Auditor General thought it necessary to call attention to the matter, because it did not seem in strict accordance with the letter of the law; not that he had any objection, on principle, to raise to the thing. (Mr. *Hamilton*.) My explanation, I think, would go to this, if it is worth anything, that the expense would scarcely come under the "costs of and incidental to the detention and survey of the ship," and would be more for purposes of office discipline to secure uniformity of action on the part of the various officers at the ports.

160. (To Mr. *Ryan*.) After the explanation given, do you think it still contrary to the letter

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Mr. *Welby*, C.B., Mr. *Ryan*, Mr. *Mifford*, Mr. *Mason*, and Mr. *Hamilton*.

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Mr. Welby, C.B., Mr. Ryan, Mr. Mitford, Mr. Mason, and Mr. Hamilton.

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## APPROPRIATION ACCOUNTS—Class II.

### Vote 8.—Board of Trade—continued.

*Chairman*—continued.

letter of the law?—If it is not part of the costs of and incidental to the detention and survey of the ship, of course we should raise no objection.

161. (To Mr. *Hamilton*.) Has any determination been come to with respect to the Survey Staff being brought within the Order of Council of 1870?—The whole of the Survey Staff now have received Civil Service certificates, in accordance with the Order in Council, except three, and those will shortly.

162. (To Mr. *Ryan*.) Have you received any intimation to that effect?—No, not yet.

163. (To Mr. *Hamilton*.) It will be sent shortly?—Yes.

*Mr. Goldney*.

164. Is a separate account kept by the Mercantile Marine Fund?—Yes.

165. Is that audited by the Comptroller and Auditor General?—Yes.

166. In paragraph No. 10 of the Report of the Auditor and Comptroller General, I find this: "Previously to the transfer of the costs of surveys of vessels to the Vote on 1st January 1877, sums were deposited by shipowners in payment of the costs of the survey of their vessels, and these deposits were carried to the Mercantile Marine Fund;" that is the case?—Yes.

167. When that amount so deposited was in excess of the expenses incurred, then you repaid it out of the Mercantile Marine Fund?—Yes.

*Lord Eslington*.

168. When you found that the sum deposited exceeded the cost incurred, did you not take into consideration the expediency of reducing the scale of the fees?—It would simply arise from an error in the estimate of the amount that ought to be deposited.

*Mr. Goldney*.

169. Now the Comptroller and Auditor General suggests that the whole amount should be carried to the Exchequer, according to "the principle which has for many years been established in the Accounts of Expenditure in the Civil Service Votes, viz., that all casual receipts should be regarded as payable without deduction into the Exchequer;" do you now pay the whole that you receive into the Exchequer, or not?—We do not.

170. Will you explain why?—I understood this paragraph to refer to the settlement which has been come to between the Mercantile Marine Fund and the Vote as to the transfer of the service. (Mr. *Ryan*.) The question raised here is, whether the principle should be adopted of abating from the Exchequer Extra Receipts sums before they are paid in, or whether the expenses, whatever they are, should not be charged to the Vote, and the sums received on account of Exchequer Extra Receipts paid in the gross. The view we have put forward here is the view which the Exchequer and Audit Department have taken all along. It is, practically, the Exchequer Extra Receipt question which this Committee have had before them for a great many years, and which has never been settled yet, and perhaps will not be yet settled; but with

## APPROPRIATION ACCOUNTS—Class II.

### Vote 8.—Board of Trade—continued.

*Mr. Goldney*—continued.

regard to the Civil Services, however, the rule is very nearly uniform, that all the costs, such as they are, must be provided for in the Votes, and that all the receipts of a casual nature shall come in as Exchequer Extra Receipts. In the case of the Army and Navy Services, the rule is different; but in the case of the Civil Services the extra receipts are comparatively small, and, therefore, it has been possible to carry out the principle, and we have always held to the opinion that that was the only solution of the question which was workable on principle; that any other arrangement was extremely difficult, and led to exceptions of numerous kinds, and, therefore, wherever there is a retrocession, as there seems to be in this case, from the principle which has been observed, we have called attention to it.

171. (To Mr. *Welby*.) Reverting back to the discussion of the surveys in the cities, I see a case where the City of Exeter has agreed to pay two-thirds of the amount of the costs; do you see any distinction between the position here and that in principle as regards the extra receipts. In the Vote of the Surveys it is stated that Edinburgh will pay the whole expense of the survey, and the City of Exeter has agreed to pay two-thirds; therefore, if the whole expenditure is to be incurred by the Office of Works in that city, is not the two-thirds an extra receipt?—I should say first of all that there is a difference of opinion between the Treasury and the Audit Office upon this point of the extra receipts.

172. Would you kindly state your reasons for the difference in that case of the City of Exeter?—The Treasury hold it to be the correct view that deposits which have to be repaid are not revenue, and that, on that account, they ought not to be paid into the Exchequer, because that involves on the other side of the account, a charge upon the Vote which would be a fictitious charge, according to the views of the Treasury.

173. Then you differ from Mr. *Ryan*'s views on this very paragraph?—On this very point.

174. And you think that the department themselves should deal with the rebate as the circumstances arise?—We should go further, and say that the Treasury differ to a great extent from the general rule that Mr. *Ryan* has stated. I think with regard to the method of dealing with extra receipts, no doubt you may find a precedent for every course under the sun; but of late the great object of the Treasury, and for various reasons, has been to avoid encumbering the Estimates with fictitious expenditure. There are more reasons than reasons of simple account for objecting to that course; and where it is possible to bring the case fully before Parliament, and yet at the same time to avoid estimating for fictitious expenditure, the Treasury object to paying money into the Exchequer if it is only to be followed by a charge per contra on the Vote.

*Mr. Thomson Hankey*.

175. What do you mean by "fictitious expenditure"?—If in this case a deposit is paid into the Board of Trade, and certain charges have to be paid out of that deposit, that really is expenditure

## APPROPRIATION ACCOUNTS—Class II.

Vote 8.—Board of Trade—*continued.*

*Mr. Thomson Hankey*—continued.

penditure borne by the individual, not by the State, and therefore if you charge the Estimates with that expenditure, that is expenditure which I should call fictitious.

*Mr. Goldney.*

176. Could not they draw upon the Paymaster-General if it went into the Exchequer?—If it goes into the Exchequer it must be met on the other side by a charge on the Votes.

*Chairman.*

177. I believe the whole question of extra receipts will be brought before the Committee before long?—I believe so.

*Lord Eslington.*

178. (To *Mr. Hamilton.*) Let me put this to you; these deposits by shipowners of a portion of the charge of the survey of their vessels are of course an anticipated portion, an estimated portion of what the whole cost will be; it may be more or it may be less?—Yes.

179. But why do you require a shipowner to make a deposit before his vessel is surveyed?—In order to be sure that we shall get the money.

180. And you sometimes get more than the money?—We do.

181. And then you return it to him?—Yes.

182. That is rather a round-about process?—But it is necessary.

183. But as I understand, now, under the new regulations, whereby the costs of the survey are transferred from the Mercantile Marine Fund to the Vote, these deposits of course are not called for?—Yes, just as before.

*Chairman.*

184. Coming now to paragraph 12, with regard to Sub-head D., relating to certain expenses included in it on account of the Statistical Congress at Buda, Pesth, would it not have been more correct to have charged these expenses under a new sub-head?—We asked the Treasury for sanction to the expenditure, and when it was given I do not think the point was considered.

185. (To *Mr. Welby.*) Considering that this was an unexpected service, and also that one of the delegates was not even a member of the Board of Trade establishment, would it not have been more correct to have charged it under a new sub-head if it was to have been charged against this Vote at all?—I think the special circumstances justify the Board of Trade and the Treasury in the course followed; but considering the special nature of the service, I think it is quite open to question whether it would not have been better to have made this the subject of a special sub-head.

186. (To *Mr. Ryan.*) It is stated in paragraph 13, that vouchers for 24*l.* 17*s.* had not been received. Have they yet?—No. (*Mr. Hamilton.*) The difficulty which arises in that case is this; these vouchers were for the receipts of certain witnesses for attendance at a prosecution for sending an unseaworthy ship to sea, and we applied to the County Treasurer for a certain portion of the costs under the Judges' Order;

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## APPROPRIATION ACCOUNTS—Class II.

Vote 8.—Board of Trade—*continued.*

*Chairman.*—continued.

the County Treasurer has got these vouchers; I sent a clerk to him yesterday, and this clerk saw the vouchers, and they have now come to the Examiners of Criminal Law Accounts to the Treasury at Spring Gardens, and they say that they cannot part with the vouchers; but I have no doubt that an arrangement might be made by means of which, if the Comptroller and Auditor General would allow one of his examiners to go there, he might inspect them.

*Lord Eslington.*

188. I presume that, in the event which often occurs, of a survey being held, and the vessel being pronounced seaworthy, the whole of the amount deposited is returned to the shipowner?—Yes, if a deposit has been taken.

189. Is it invariably the case that a deposit is required upon a survey being demanded?—It is only in the case of unseaworthiness that we have a deposit to meet expenses.

190. There are cases in which a survey is demanded by the seamen?—Yes.

191. In such a case as that would a deposit be required?—No. Those expenses, in the event of the ship proving to be seaworthy, are chargeable against the public, as they are practically not recoverable from the seamen.

*Chairman.*

192. (To *Mr. Welby.*) With reference to paragraph 14, the Committee were informed last year that the Treasury were in communication with the Lord Advocate with respect to the system of paying salaried procurators fiscal in Scotland for services performed by them under this Vote. Has that communication arrived at any result?—I believe I am right in saying that a communication has been received from the Lord Advocate upon the subject, but there are some further circumstances which, in the opinion of the Treasury, ought to be brought to his attention, and consequently a further reference has been made to him upon which his opinion has not been received.

193. Then the matter does not seem to have advanced since last year, when you gave a similar answer to the effect that the Treasury were in communication with the Lord Advocate upon the subject?—I believe the Lord Advocate has reported that the procurators fiscal were entitled to the remuneration; but we thought that there were certain circumstances which he might not have sufficiently taken into account, and the matter was referred back to him on that ground.

[*Mr. Mitford, Mr. Hamilton, and Mr. Mason* withdrew.]

On Vote 11.

## CIVIL SERVICE COMMISSION.

194. (To *Mr. Ryan.*) The Comptroller and Auditor General calls attention to a note appended to the Estimate, stating that "One of the senior clerks has been employed as examiner in book-keeping, and for this service was paid, for the year ended 30th September 1876, 41*l.*, and that the sum actually paid in the year was 53*l.*;

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I suppose

*Mr. Welby, C.B., Mr. Ryan, Mr. Mitford, Mr. Mason, and Mr. Hamilton.*

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Mr. Welby, C.B., and  
Mr. Ryan.

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## APPROPRIATION ACCOUNTS—Class II.

### Vote 11.—Civil Service Commission—continued.

*Chairman*—continued.

I suppose the difference in the amount is owing to the fact that it was for a different period?—Yes; the office gave the facts only up to the end of September, and we gave them up to the end of the financial year.

On Vote 12.

### COPYHOLD, INCLOSURE, AND TITHE COMMISSION.

*Mr. Goldney*.

195. (To Mr. Welby.) I wish to call your attention again to the same subject that we were talking of just now; under Sub-head B. there is a provision in the Vote for tracings from maps, and in the explanation it is stated, "It is to be observed that the total cost is entirely repaid by the parties for whom the tracings are made." I believe that to be the case; but according to your view, that sum ought not to come into the Vote, but there ought to be a departmental arrangement that the parties should pay as the tracings are wanted; that would be carrying out your theory?—Yes, that would be carrying out my view; then I must make this addition, that the Vote should get the allowance, and that it should be stated in such a manner as would bring it clearly before Parliament.

196. The sum should be stated, but it should not be included in the Vote?—Yes.

197. Your idea is, that instead of including the 1,900 *l.* as an estimate of the expense which would have to be paid and then repaid for the tracings, it should be excluded, but that a footnote should be appended, saying that the department would have to pay for the tracings, which the public would pay them back for. The footnote we have here states that "the cost is entirely repaid," and the reason of the expenditure being less than the Vote is, that the public have not demanded precisely as much as you thought they would; that is so, is it not?—Yes. So far as the public repay the office for the cost of those tracings, I think the arrangements should be what I have already stated, and the money received should not be paid into the Exchequer.

198. The cost should not appear in the Vote, but public attention should be called to it by a footnote?—It is a matter of form; it might be done in that way, but public attention should be called to it, certainly.

On Vote 20.

### PATENT OFFICE AND MUSEUM OF PATENTS.

199. There are certain sums now charged upon every patent as the Attorney General's fees, I think?—Yes.

200. They go into the Exchequer under the recent arrangement for the Attorney General to be paid by salary instead of by fees?—Yes.

201. They would come into the Extra Receipts, I suppose?—Yes, they would.

202. They are paid by the parties to the Home Office, I think?—Yes.

203. And the Home Office does not pay them

## APPROPRIATION ACCOUNTS—Class II.

### Vote 20.—Patent Office and Museum of Patents—continued.

*Mr. Goldney*—continued.

directly into the Exchequer, but pays them to the Clerk of the Patents?—The Home Office pays the sum, I believe, to the Clerk of the Attorney General for Patents, and he pays it over to the Solicitor to the Treasury, through whose account it passes into the Exchequer.

204. I do not think that the amount paid in by the Clerk of the Patents to the Exchequer is exactly the same as he receives from the Home Office; he deducts certain charges does he not?—I cannot tell the honourable Member whether the sum is exactly the same or not, but if he will turn to page 169 of the Accounts now before him, he will see a description there of the Extra Receipts of the Solicitor to the Treasury, and he will see that one of the items of that Account is, "Received by D. G. Johnstone, Esq., Clerk to the Attorney General for Patents, on appointments for the year, 1,225 *l.*"

205. What I want to get at is this, the Clerk of the Patents claims, as I understand it, to have a certain amount of business paid for to himself, whether properly and rightly I do not know at all, but does the Solicitor to the Treasury examine that, or does anyone examine it?—I will enquire into that.

[The Vote was postponed.]

On Vote 21.

### PAYMASTER GENERAL'S DEPARTMENT.

*Mr. Cubitt*.

206. With regard to Sub-head C, will you explain to us how an irrecoverable balance comes under the head of Expenditure?—A sum was due by these individuals which has not been recovered, and is irrecoverable, and of course it stands charged against the accountant of the department. When it is at last decided to be irrecoverable and written off, it is necessary to charge it against the Vote, in order to enable the charge standing against the accountant to be discharged. Of course the accountant stands charged with the money which was issued to him, and until he has produced the discharge he must stand charged with it for ever, and if he cannot recover the money from the individual to whom he advanced it, he must either repay it himself or it must be repaid in this manner by the action of the Government.

*Chairman*.

207. (To Mr. Ryan.) With regard to a charge for the salary of a clerk transferred from the Treasury to the Paymaster General's department, has the authority of the Treasury yet been received for this salary?—We have not yet received it from the department, but inasmuch as this transfer is a transfer between the Treasury and Pay Office, it is virtually included in the Treasury Minute which we have just received with reference to the Treasury Vote; that authorises it practically. (Mr. Welby.) I may add that steps have been taken for giving the formal notice in the "London Gazette," which is also alluded to in the first paragraph of the Report.

## APPROPRIATION ACCOUNTS—Class II.

On Vote 25.

## STATIONERY AND PRINTING.

*Chairman*—continued.

208. There is appended to the Comptroller and Auditor General's Report a statement of the stock in store at the Stationery Office on the 31st of March 1877; I believe this is the first time that that statement has been furnished, is it not?—It is the first time that that statement has been put in, and I may perhaps express on the part of the Treasury, their great satisfaction that such a document has been appended to the Account.

209. (To Mr. *Ryan*.) Was this statement prepared by the officers of your department, or was it provided for you by the Stationery Office?—The summary of it was prepared by us; but the books and figures were provided by the Stationery Office, and we checked every item to see that it was a correct account.

210. You can answer for it that it is a correct statement?—Yes, certainly, we believe it to be so.

On Vote 26.

## OFFICE OF WOODS, FORESTS, AND LAND REVENUES.

211. With respect to the writers whose increase of salary is questioned by the Comptroller and Auditor General, do you consider that the explanation given by the Treasury is open to objection?—The impression that the Comptroller and Auditor General had upon this point was that the view of the Treasury was perhaps rather a false one, but still it was not one which we felt it our duty to take exception to further than calling attention to the correspondence. The Committee will understand that whenever a question arises upon which we are not fully satisfied, we think it our duty to submit it for consideration.

On Vote 40.

## OFFICE OF PUBLIC WORKS, IRELAND.

212. Has any further information been received with respect to this Mr. Barrett, whose case comes before us every year?—We have no further information with respect to the reason why the Commissioners cannot obtain a duly qualified boy messenger.

## CLASS III.

On Vote 7.

## LONDON BANKRUPTCY COURT.

213. It is stated at the conclusion of the Report of the Comptroller and Auditor General that "the Accountant has omitted to explain the cause of variation between the estimated amount of Extra Receipts and the amount realised;" has any explanation yet been furnished of that variation?—No; we called the attention of the accounting officer to the fact of this omission, and he in reply asked for a return of the Account. That was on the 18th of December, and at that time it was in print, and it could not conveniently be returned to him, but

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## APPROPRIATION ACCOUNTS—Class III.

Vote 7.—London Bankruptcy Court—continued.

*Chairman*—continued.

he was informed that any explanation he furnished would be appended to the Report. He did not, however, think fit to furnish us with any explanation.

[The Vote was postponed.]

On Vote 10.

## POLICE COURTS; LONDON AND SHEERNESS.

*Lord Eslington*.

214. In regard to the last paragraph of the Report of the Comptroller and Auditor General, which says that "the total amount of" the loss caused by the defalcations of a gaoler "will, by the direction of the Treasury, be borne by the Exchequer Extra Receipt Fund;" is the Extra Receipt Fund kept in an entirely distinct Account from the other Exchequer Balances?—There is a distinct heading in the Account for Exchequer Extra Receipts, and in some cases there is also an actual debtor and creditor account kept.

215. That is from year to year?—Yes; from year to year.

On Vote 13.

## CONVICT ESTABLISHMENTS IN ENGLAND AND THE COLONIES.

*Chairman*.

216. (To Mr. *Welby*.) It is stated in the third paragraph of the Comptroller and Auditor General's Report that the Treasury, in a Minute of the 31st October 1877, state that "my Lords are not disposed to alter the present form of the Convict Estimate until the Committee" (that is, the Public Accounts Committee) "have had an opportunity of re-considering their recommendation; but they wish that a foot-note should be appended to Sub-head S., 'Fine Fund,' explaining its nature, and stating that the amount has been deducted from Sub-head D., 'Pay and Allowances.'" Can you now state what are the objections of the Treasury to the recommendation of the Committee?—The Treasury in dealing with this question have been anxious, first of all, as I have said in other cases, to avoid a fictitious swelling of the expenditure, but at the same time to bring the transaction clearly before Parliament. In the present case certain fines were inflicted on prison officers for slight misconduct. Those fines are not taken for the benefit of the State; they are practically applied to the benefit of the body of officers. The Treasury therefore hold that they are not Revenue, and consequently they do not wish to pay them into the Exchequer as Extra Receipts; but they wish to show Parliament what is done with them; they therefore deduct the fines from the total estimate of salaries, and make provision for the object to which the fines are to be applied under another sub-head. By this means they consider that Parliament is informed that the officers are fined; that the fines are applied to a particular object for the benefit of the body of officers generally, and at the same time the mistake, as they think it, of making a fictitious Estimate of Revenue and Expenditure, is avoided. Those are the grounds

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Mr. *Welby*, C.S., and Mr. *Ryan*.

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Mr. Welby, C.B., and  
Mr. Ryan.  
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### APPROPRIATION ACCOUNTS—Class III.

#### Vote 13.—Convict Establishments in England and the Colonies—*continued*.

*Chairman*—*continued*.

grounds on which the Treasury have been anxious that the recommendation of the Committee should receive some re-consideration.

217. But is not the objection equally got rid of by the system which is adopted in the Army Estimates with respect to the fines for drunkenness?—We think that the course recommended by the Comptroller and Auditor General involves a double estimate.

218. I speak of the recommendation of the Committee to adopt the plan followed in the Army Estimates. In the Army Estimates, under Vote 17, a similar question arises with respect to the funds raised from fines for drunkenness, and according to the plan adopted in those Estimates the amount of the Estimate is not swollen, is it?—In the case of the Army Estimates the sum is stated in the Estimate, but it is deducted, and the net amount only is voted. If you turn to Vote 17 you will see that.

219. Would not that equally have been the case if the recommendation of the Committee had been adopted with respect to the Vote for Convict Establishments?—That would hardly effect the object that we have in view. As we understand the Audit Office plan, they would have the amount of the Fine Fund voted under "Salaries," and would then pay that amount of fines into the Exchequer, and would have a Vote again for the amount of the Compassionate Fund to which the fines are practically applied, thereby making a double charge in one Vote.

220. But I think the Committee did not last year adopt the recommendation of the Comptroller and Auditor General on that point, but suggested the plan which is adopted in the Army Estimates?—The reason why the Treasury like the present plan is, that they think it shows the transactions more clearly to Parliament, to deduct the amount from the salary, and then show under another sub-head the object to which the amount is to be devoted, which would not appear if the deduction was simply made, as it is in the Army Estimates.

221. (To Mr. Ryan.) Has any further reply been received by the Comptroller and Auditor General with respect to the advances made in Tasmania on account of the Indian Government?—We received this morning a letter from the Treasury, enclosing a copy of a letter which they have addressed to the Home Office, in which they state that they "request Mr. Secretary Cross to give directions to the agents for Imperial expenditure in Tasmania, and to the directors of convict prisons, that after the 31st of March next, no claims are to be sent to, or paid by, the latter, in respect of the maintenance in the colony of Indian convicts"; that would, of course, practically settle this question.

*Lord Eslington.*

222. Then, I presume it follows that the suggestion of the Comptroller and Auditor General will be adopted, and that these advances made by the Government of Tasmania will no longer appear in the accounts at all?—Just so.

### APPROPRIATION ACCOUNTS—Class III.

On Vote 19.

#### COURTS OF LAW AND JUSTICE, SCOTLAND.

*Chairman.*

223. (To Mr. Welby.) It appears that an inquiry was addressed by the Comptroller and Auditor General to the Treasury with respect to certain receipts in the Justiciary and Sheriff Courts in Scotland, to which, at the date of the Report, no reply had been received; has the Treasury yet answered that communication?—The question has been referred by the Treasury to the Queen's and Lord Treasurer's Remembrancer in Scotland, and it is not yet in a position which enables the Treasury to come to a decision, and communicate with the Audit Office upon the subject, because there is a technical question with respect to the small branches of the hereditary revenue, which has been raised by the Comptroller and Auditor General, and which we have not yet been able to decide; it is a technical legal question.

224. Then the subject is still under consideration?—Yes.

*Lord Eslington.*

225. It appears that the Queen's and Lord Treasurer's Remembrancer treats one portion of these fees as Extra Receipts, and another portion as revenue, in fact; does he give any reason why he should make that distinction?—Both these receipts came into the Exchequer finally, but one part of his receipts he holds to be what are called the small branches of the hereditary revenue; those are the branches which are given up by the Crown to the public on the accession of the Sovereign, and revert upon the demise of the Crown to the successor. In consequence of that, there is a different method of dealing with them from that in which the other extra receipts are dealt with, and it is in regard to that point that this technical question has arisen.

226. But he passes the second class of fees through his account, and credits them, I suppose, to the Exchequer?—They reach the Exchequer, certainly.

227. You say that they do eventually find their way into the Exchequer?—Yes, and as quickly as the others; the only difference is that they are paid in under a different heading of the account.

228. Then it is only a question as to the mode of keeping the account?—Yes, it is really only that.

On Vote 22.

#### LAW CHARGES AND CRIMINAL PROSECUTIONS (IRELAND).

*Chairman.*

229. Will the charge in this account for the Phoenix Park riots be the final one?—There will be some charges in the current year on account of them. The Committee are aware that there has been an appeal to a higher court in Ireland, and the expenses of that appeal will come into the current year; at least we believe that they will fall in the current year.

230. Is it considered that they will fall under one of the ordinary Sub-heads, or has any special provision been made for them?—No special provision has been made.

231. (To

## APPROPRIATION ACCOUNTS—Class III.

Vote 22.—Law Charges and Criminal Prosecutions (Ireland)—*continued.*Lord *Eslington.*

231. (To Mr. *Ryan.*) I observe that the Comptroller and Auditor General invariably reports a case of double salaries being received; is it incumbent upon him under the Exchequer and Audit Act to make that report in all cases where additional salaries are received by any public officers?—He only notices the fact where it is not already shown, either in the estimate or on the account, and he does it not under any directions of the Exchequer and Audit Act, but in virtue of a recommendation of this Committee.

Mr. *O'Reilly.*

232. Is it a recommendation of this Committee that that should be shown in the estimates and in the accounts?—Yes.

Colonel *Stanley.*

233. (To Mr. *Welby.*) Whose duty is it to give this necessary information; is it the duty of the person receiving the double salary to notify the fact?—I think not; in the first instance the duty lies upon the accounting officer, and he must be held responsible in the first instance, but it is evident that he labours under great difficulty in regard to it, for he cannot know the fact in many cases. Take, for instance, the case of a pensioner, very often he is not in a position to know that A. B., a clerk in his office, is receiving a pension for service in another department. The Treasury have thought whether it would not be possible to lay down a rule that it shall be the duty of an officer who pays any emolument to any person in public employment in another department, to notify the fact to the accounting officer of the department in which the recipient is employed. But, at all events, there is considerable difficulty in carrying out the regulation which the Committee has recommended, and the only

## APPROPRIATION ACCOUNTS—Class III.

Vote 22.—Law Charges and Criminal Prosecutions (Ireland)—*continued.*Colonel *Stanley*—*continued.*

way that I see in which it can be carried out is by carefully noting the cases which the Comptroller and Auditor General reports, and by rigorously insisting that every case that he reports shall be notified hereafter.

*Chairman.*

234. (To Mr. *Ryan.*) Do you imagine that the greater part of these cases come to your knowledge, or do you think that there are many which you cannot ascertain?—There may be some that we cannot ascertain, but we have a system of communication between the examiner of one account and the examiner of another, which insures that most of these cases shall be brought to light.

On Vote 27.

## COURT OF PROBATE, IRELAND.

235. The over payment of 1 l. 5 s., mentioned in paragraph 3 of the Report, is admitted, as I understand it?—Yes, and it has since been recovered.

On Vote 32.

## CONSTABULARY OF IRELAND.

Lord *Eslington.*

236. With reference to Sub-head 2, the accounting officer admits that a sum of 40 l. odd, included under this Sub-head for Pensions, has neither been paid nor is payable within the period of the Account; I presume that has been surrendered?—The amount to be surrendered should be increased by that amount, and that sum should not be charged against the Vote.

237. And it will be so settled?—Yes, if the Committee so settle it.

238. It was a mistake, in fact?—Yes.

## CLASS IV.

## On Vote 2.—SCIENCE AND ART DEPARTMENT FOR THE UNITED KINGDOM.

Mr. NORMAN MACLEOD, called in; and Examined.

*Chairman.*

239. (To Mr. *MacLeod.*) IN paragraph 3, the Comptroller and Auditor General states that under Sub-head E. 3, are included two payments "to cover the travelling and personal expenses of two gentlemen who are stated to have come from Florence in connection with the Loan Exhibition of Scientific Apparatus. No information beyond the fact that these payments were approved by the Vice Presidents has been adduced in support of the charge;" were those payments approved by the Treasury?—Not specially; they were for expenses incurred by two gentlemen who came over from Italy in charge of certain objects which the Italian Government would not allow to come over unless they were under the charge of their own officials.

240. I understand that you have obtained a general sanction from the Treasury for all ex-  
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*Chairman*—*continued.*

penses connected with the Exhibition?—Ultimately, yes. Mr. *MacLeod.*

241. Was any information given to the Treasury when it was determined that this Loan Exhibition should be held that would lead them to suppose that the cost would be anything approaching to the sum of 13,000 l.?—Not till after the Exhibition had been opened. It is usual for our department to hold Loan Exhibitions, the cost of which is defrayed out of the ordinary Votes. At first this Exhibition was expected to be small, but the Crown Prince and Princess of Germany having taken great interest in it, France, Italy, Austria, and other countries sent contributions, and the result was that the Exhibition became a very much larger one than was originally expected.

242. If you had anticipated that the cost would  
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# APPROPRIATION ACCOUNTS—Class IV.

Vote 2.—Science and Art Department for the  
United Kingdom—*continued.*

*Chairman—continued.*

be anything approaching to what it was, should you not have considered it right that the sanction of the Treasury should be received before this Loan Exhibition was entered upon?—Yes, unquestionably, and the Treasury would no doubt have been communicated with if it had been at all foreseen that such an expenditure would be incurred. I may mention with regard to Exhibitions of this kind, that there is to be a Loan Exhibition of furniture this year at Bethnal Green; furniture being an article which is largely produced in that neighbourhood. We should not think of going to the Treasury for permission to hold such an Exhibition; because the cost will be very inconsiderable, and will be defrayed out of the usual Votes of the department. Now, the Loan Exhibition of Scientific Instruments was regarded in that light in the first instance, that is to say, as simply a Loan Exhibition, which would not assume very large proportions.

243. But before the Exhibition was really begun, you must have been well aware that the expense would be very large?—No, it was a long time before the Exhibition assumed those large proportions, and it did so very gradually.

244. And you did not consider at any time that you were in a position to ask the Treasury for their sanction to this expenditure?—Some time after the opening of the Exhibition, we communicated with the Treasury respecting these outlays, and we gave them an estimate of the probable cost, I think, in July, if I recollect rightly.

*Colonel Stanley.*

245. Was not that after a correspondence with the Treasury in which they demurred to, and pointed out, the irregularity of this proceeding; was there not a Minute circulated by the Education Department to the heads of divisions, in which they themselves expressed their sense of the great financial irregularity which had been committed?—Yes.

*Mr. Goldney.*

246. If the heads of the department objected to it, who gave the direction?—The action with reference to the Exhibition was taken entirely with the concurrence of the Lords of the Committee of Council on Education; nothing was done in our department except with their approval; I refer to the Lord President of the Council, and the Vice President of the Committee of Council on Education.

*Mr. O'Reilly.*

247. What were the items under which the unexpected expenditure mainly accrued?—Carriage, police, and attendants; in short, there was an increase under a number of Sub-heads.

248. That is why I asked the question. If you take the whole cost of the carriage, and the whole cost of the attendants as being unexpected, that will not come to anything like the difference between the actual expenditure and what you had stated as the estimated expenditure; therefore I want to know what were the other items of expenditure which were unexpected?—An

# APPROPRIATION ACCOUNTS—Class IV.

Vote 2.—Science and Art Department for the  
United Kingdom—*continued.*

*Mr. O'Reilly—continued.*

unexpected increase occurred under every Sub-head applicable to this service.

*Mr. Goldney.*

249. I see there is put down here the preparation of catalogues; does that mean the general preparation of catalogues or the special one?—The special one.

*Mr. Cubitt.*

250. Did you make any calculation or estimate beforehand of what the extra expense of the Exhibition would be?—Yes; there was an estimate made and sent to the Treasury, but that was after we had opened the Exhibition.

251. Do you remember what the amount of that estimate was?—Yes, I think the amount was 13,677 *l.* 10 *s.* 7 *d.*, as stated at page 251 of the Appropriation Account.

252. That is a statement of the expenditure. I want to know the amount of the estimate which you sent in of that expenditure?—I do not remember the precise amount.

*Mr. O'Reilly.*

253. What would be the probable expenditure?—About 13,000 *l.* was, I think, the amount of the estimate that we sent in.

*Mr. Cubitt.*

254. I understand this 13,677 *l.* 10 *s.* 7 *d.* to be the amount of the actual expenditure?—Yes, during the year 1876-77.

255. That is the money which the Exhibition actually cost you in that year?—Yes.

256. But I think you said, a short time ago, that you sent in an estimate of the expenditure?—Yes.

257. I want to know what was the amount of the estimate you sent in?—I am afraid I cannot tell you what the exact amount was, but I think it was about 13,000 *l.*, or 13,300 *l.*

258. Under what Sub-heads would that expenditure be divided?—The Sub-heads as given on page 251, namely, C. 10, "Preparation, &c. of Catalogues," C. 11, "Carriage, Materials, &c.," D. 2, "Occasional Professional Assistance," D. 3, "Police," and so on.

259. I mean what would be the sub-heads in the Estimate?—The Estimate was under precisely the same sub-heads.

260. Would it not be more correct to have a separate sub-head for these special exhibitions?—We do not think a separate sub-head desirable, as these Loan Exhibitions form part of the general work of our department.

261. Have you made any calculation as to what the Loan Exhibition to be held this year will cost?—I should think about 300 *l.*

*Chairman.*

262. With respect to this sum of 13,677 *l.* 10 *s.* 7 *d.*, was it all spent in the year 1876-77 on this Exhibition?—Yes.

263. Was there any previous payment, or will there be any subsequent payment on this account?—There was a previous payment in the year 1876 of a small amount, about 500 *l.*, and there

## APPROPRIATION ACCOUNTS—Class IV.

Vote 2.—Science and Art Department for the United Kingdom—*continued.**Chairman—continued.*

there are still outstanding certain claims which will amount to about 1,000 *l.* more.

*Mr. Seely.*

264. In that sum of 13,677 *l.* 10 *s.* 7 *d.* there is included a sum of 1,185 *l.* 16 *s.* 1 *d.* for “occasional professional assistance;” what was that?—A number of gentlemen, whose names I cannot at this moment give you, were engaged for the purpose of preparing catalogues, and describing the objects which had been sent over from abroad for exhibition in this country.

*Mr. Goldney.*

265. Would not that be included in the 3,600 *l.* for catalogues?—I presume you mean the 841 *l.* 15 *s.*

266. No; if you turn back to page 247, you will see that you paid 3,666 *l.* 5 *s.* 3 *d.* for “preparation, &c. of catalogues;” would not this be a part of that 3,666 *l.*?—No; that 3,666 *l.* 5 *s.* 3 *d.* included also the ordinary catalogues of the South Kensington Museum.

267. You estimated 1,700 *l.* for that purpose?—We did.

268. And you paid rather more than double that amount?—Yes.

269. Would not that include the remuneration of the professional gentlemen who did it?—No.

270. Then the catalogues really cost 1,200 *l.* beyond that. You say that the necessity of having this “occasional professional assistance,” for which you have put down 1,400 *l.* in your Estimate, on page 247, was for the preparation of the catalogues; you spent 1,200 *l.* more for that “occasional professional assistance,” and you say that was occasioned by your requiring some assistance in the preparation of the catalogues?—Partly.

271. But you have also doubled the expense of the catalogues besides, as compared with the estimate?—I cannot exactly distinguish between the work which those gentlemen were employed upon so as to say how far they were employed upon the catalogues, or in describing the objects which were received, or for other services.

272. You have also put down “attendants and messengers,” 1,509 *l.* 10 *s.* 6 *d.*, they would not be engaged in showing the things?—No.

273. Is there any list of these gentlemen?—Yes, I think one was supplied to the Audit Office. (Mr. Ryan.) I have no doubt we had a list of them.

*Mr. O'Reilly.*

274. (To Mr. MacLeod.) You spent on catalogues 3,600 *l.* odd, while you estimated 1,700 *l.*; now you state that the reason of that extra expenditure on catalogues was an unexpected increase in the catalogues of this Loan Exhibition?—Yes, partly.

275. I suppose you had estimated something for the catalogues of the Loan Exhibition; but I find that, even assuming that the whole 841 *l.* was unexpected expenditure, that will still leave you 1,100 *l.* to account for of the extra expenditure on catalogues; that is to say, you intended to expend 1,700 *l.*; besides that, taking it at the utmost, you spent 800 *l.* for this Loan Exhibition

69.

## APPROPRIATION ACCOUNTS—Class IV.

Vote 2.—Science and Art Department for the United Kingdom—*continued.**Mr. O'Reilly—continued.*

which you did not expect; that makes 2,500 *l.*, but the actual expenditure is 3,600 *l.*?—The payment of 841 *l.* 15 *s.* was for the special catalogues of this Loan Exhibition. The “preparation, &c., of catalogues,” under the head of “Expenditure,” on page 247, includes that 841 *l.*; therefore we expended on catalogues for the South Kensington Museum the balance between that and the 1,700 *l.*

276. Or rather the balance between that and the 3,666 *l.* 5 *s.* 3 *d.*?—Yes. We under-estimated what we required for our own service at South Kensington in estimating it at 1,700 *l.*

277. How much did you under-estimate your own expense in the matter of catalogues?—We under-estimated it by the difference between 1,700 *l.* plus 841 *l.* 15 *s.* and 3,666 *l.* 5 *s.* 3 *d.*

278. Then you under-estimated it by about 1,100 *l.*?—Yes.

279. Then your estimate stands in this way; even assuming that you estimated nothing for the catalogues of this Loan Exhibition, which, nevertheless, you knew you were going to undertake, still your estimate, as representing only your regular estimate for catalogues for South Kensington, was erroneous by 1,100 *l.* odd; was that the fact?—Yes; we under-estimated our expenditure for catalogues in that year by that amount.

280. For your regular catalogues, exclusive of the Loan Exhibition catalogues?—Yes.

281. Can you give any explanation of the reason why your estimate was 1,100 *l.* wrong for the ordinary catalogues?—No; I can only say that with the sanction of the Treasury we exceeded the Vote to that amount.

*Colonel Stanley.*

282. Was the attention of the Treasury specially called in giving that sanction to the under-estimate and the circumstances of the case?—Yes, in making an application to the Treasury for permission to exceed a Vote, we always give reasons for doing so.

283. In that particular case was it done?—I do not remember the contents of the letter which was written, and I have not got a copy of it here; but I believe that we gave full explanations to the Treasury; we always do so whenever we require to obtain authority for an excess.

*Lord Eslington.*

284. Did you undertake to pay the carriage for all these objects which came over for exhibition?—Yes, we did.

*Mr. O'Reilly.*

285. I perceive that the other sub-heads of your Estimate for Vote 2 are all for definite things, “Schools of Science and Art,” “Branch Mission, Bethnal Green,” “School of Mines,” and so on, but there is no definite estimate under a special head for occasional exhibitions. You say that you take the expense of them out of the general sum voted; would it not be possible in framing your estimates, so to frame them as to put these contingent exhibitions of the ensuing year, and similar expenses, in such a way as that Parliament should know beforehand what the purpose was for which it was voting money?—

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Mr. Welby, C.B.,  
Mr. Ryan, and  
Mr. MacLeod.

27 February 1878.

Mr. Welby, C.B.,  
Mr. Ryan, and  
Mr. MacLeod.

27 February 1878.

#### APPROPRIATION ACCOUNTS—Class IV.

##### Vote 2.—Science and Art Department for the United Kingdom—*continued.*

Mr. O'Reilly—*continued.*

money?—We could, undoubtedly, undertake to foresee what we should like to do in the way of a special exhibition of art objects in time for the Estimates of the succeeding year, and we could have, if it is wished, a special sub-head for that particular service. In that case, however, it would be necessary for us to have an understanding with the Comptroller and Auditor General as to what payments connected with such exhibitions, which are made at present under a number of sub-heads, should be chargeable against that one sub-head.

286. Was the attention of your department called to a recommendation of this Committee of last year, in which we stated that we agreed with the Comptroller and Auditor General, that in the case of a service which like the Exhibition of Scientific Apparatus at South Kensington, has not been provided for by a Vote, the expenditure should be shown under a new and separate sub-head; that is much about the same thing, is it not?—Yes, we were quite aware of that; but did not regard that expression of opinion on the part of the Committee last year as applying to small exhibitions, such as we have been in the habit of holding for a number of years, but only as applying to any considerable exhibition which should involve such an expenditure as that which has been incurred for this Scientific Loan Exhibition, and which I conceive will never be likely to occur again.

287. But what security has Parliament when voting sums of money that it will not occur again; they had certainly no means of guessing that this expenditure would have been incurred; it appears that your department were equally ignorant, although we might have expected that they would know what they were going to do; was there anything upon the estimate to give Parliament an idea that they were sanctioning an expenditure for a separate Loan Exhibition?—Nothing.

288. Does your department intend in future in framing its estimates to allow Parliament in addition to the fixed heads of expenditure which they understand, such as the schools, and the Museum, and the Branch Museum, and other matters, to see under one head what is the expenditure, as far as it can be estimated, which they are going to sanction for the purpose of what you have termed, I think, to-day, "Occasional Exhibitions"?—We have always been in the habit of considering that these occasional exhibitions which have been held at intervals for a great many years were to be paid for out of the ordinary services voted by Parliament, and they have hitherto been on so small a scale that with the exception of the exhibition of scientific apparatus, the ordinary Estimate has not been exceeded. There was, in our opinion, no occasion to ask Parliament to grant a special Vote for a Loan Exhibition which we regard as one of our recognised functions.

289. Then do I understand you to say that it was not understood that the heading "Occasional Exhibitions," or anything equivalent to it, should ever be laid before Parliament?—No, it was not. It was considered part of the ordinary work of the department, on behalf of the Museum.

290. But the ordinary work of the department

#### APPROPRIATION ACCOUNTS—Class IV.

##### Vote 2.—Science and Art Department for the United Kingdom—*continued.*

Mr. O'Reilly—*continued.*

is divided in the estimate under certain separate heads; one part of the ordinary work of the department is to keep up the Schools of Science and Art; another part of the ordinary work of the department is to maintain the South Kensington Museum; another part of the ordinary work of the department is to maintain the School of Mines; under what part of the ordinary work would you consider that those occasional exhibitions came. You would not, for instance, consider that they came under the head of School of Mines?—No, they come under the head of the South Kensington Museum, and it is under sub-heads in that head of service that the expenditure is placed.

291. Is that so, as a fact. I see that South Kensington Museum is under Sub-head D.; a great part of this expenditure does not come under Sub-head D.?—It comes under C., D. and E.; C. and D. are for the service of the South Kensington Museum, which provides out of its collections for the circulation of objects to country towns. E. is a Vote for services common to the whole department, but largely for the Museum also.

292. What I want to know is, could not your estimates be so framed as to let Parliament understand what is to be the cost of maintaining the South Kensington Museum, and the other institutions, and what is to be the extra cost of what you consider to be part of your general work, but which is a separate part, namely, occasional exhibitions?—Yes, we can do so, but it will be difficult to divide the cost of attendants and police, and to give to the new head of service a portion of the charge for police and attendants, while allotting another portion to the general service.

293. But, even assuming that the original sub-head provided for the maintenance of the ordinary staff, you might have a distinct sub-head which provided for all increased expenditure on occasional exhibitions, a sub-head stating that the money voted under it was for the increased expenditure involved in this special service?—Yes.

294. Might you not have had in your past Estimates, if you had known the fact, a sub-head which would have shown Parliament that it was going to vote 13,000 l. odd for a Loan Exhibition, whereas the estimate not only did not show the amount, but did not show the head at all?—Yes; but at the time the usual estimates were sent in we could not have given any reliable information. It was at a much later period that we were able to inform the Treasury what unexpectedly large proportions the exhibition had assumed.

295. My question goes to another point; I am not speaking of informing the Treasury of the magnitude of the expenditure, nor of distributing that magnitude over all the items; but I am speaking of calling to this service, be it large or small, as a separate head?—We can, of course, supply the Committee with a statement of the whole expenditure.

296. But my question is, might it not have been in the Estimate; could you not, if you had had

## APPROPRIATION ACCOUNTS—Class IV.

Vote 2.—Science and Art Department for the United Kingdom—*continued.*

Mr. O'Reilly—*continued.*

had the knowledge, have given in substance the information in the Estimate which you have now given in the statement of expenditure?—At the time when the usual estimates were prepared, we did not foresee how enormous the expenditure would become, and in the Estimate we afterwards sent to the Treasury we could only state the expenditure approximately.

Mr. Goldney.

297. What I understand is that you did in these general sub-heads provide some additional amount with regard to that proposed exhibition; you carried in something for it under several of the sub-heads?—We took 1,000 *l.* under one sub-head, for the carriage of objects, and 600 *l.*, under D. 4, for cases and fittings.

298. Let me call your attention to two or three items; in the Estimate for 1875-6 you put down 600 *l.* for professional services?—Yes.

299. In the Estimate for 1876-7, which we are now dealing with, you carried in 1,400 *l.*; therefore you added 800 *l.* under D. 2?—Yes.

300. And you spent 2,500 *l.* odd?—Yes.

301. As your Estimate for that occasional professional assistance was only 600 *l.* in the year 1875-6, it is evident that you must have added something?—Yes, we did; but I believe that increase had no connection with this particular exhibition.

302. I will take another item; you added 1,000 *l.* to D. 4, "Furniture, Fittings, and Materials"?—We did.

303. But, instead of spending 6,800 *l.*, you spent 9,600 *l.*; you must have made some calculation about that, I should think?—As I said before, this special exhibition grew in size.

304. It did not grow without some one's direction, did it?—It was all under the direction of the Lords of the Committee of Council. Our department did not move a step in the matter without the knowledge and concurrence of the Lord President of the Council and the Vice President of the Committee of Council on Education.

305. Your expenditure under the Sub-head of Furniture and Fittings, was nearly double what it was in the year before?—The occupation of additional space, and the necessity of providing new cases for exhibition, caused a large increase of expenditure.

Lord Eslington.

306. If you undertake to pay rather loosely for the carriage of all objects that are sent for exhibition, do you not think it is probable that your expenditure will outgrow all your estimates in future; I see that instead of the Estimate of 3,850 *l.* for Carriage of Materials, you spent over 6,000 *l.*; do you think it is a good plan to pay the carriage of all these objects for the exhibitors?—We should not have attained the end at all unless we had done so; admitting that it was desirable to have the exhibition, it was necessary to pay the carriage of the objects that were sent.

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## APPROPRIATION ACCOUNTS—Class IV.

Vote 2.—Science and Art Department for the United Kingdom—*continued.*

Mr. Seely.

307. You do not pay the carriage of any articles that may come to you without having first agreed to receive them?—Certainly not.

Lord Eslington.

308. Then you have some sort of check upon the amount of carriage that you pay?—Yes, certainly.

Mr. Goldney.

309. Do the people sell the things they send over for exhibition?—There have been a few sold; indeed a few have been bought by our Department.

310. Do they not sell them to the general public?—They would do so, I daresay, if they had customers. I am not aware of many having been sold. I believe some have.

311. When they were sold, did the people who sold them repay the carriage?—We paid the carriage of the articles when they arrived; therefore if the articles were not returned, we had no further payment to make.

312. But when the people sold them, they did not repay you the carriage to the exhibition?—No, I am not aware that they repaid the carriage.

313. Did anyone ask them to repay the carriage?—I am not aware that that was the case.

314. There was no arrangement of that sort that if the exhibitors sold their things they should repay the carriage?—No, there was no such arrangement. In most cases the articles were returned. They were chiefly valuable instruments, coming from different parts of England, Germany, Italy, and France, and for the most part they were returned to their owners.

315. A good many were ticketed with prices, were they not?—No, we never allow price tickets in Loan Exhibitions.

Lord Eslington.

316. The mere exhibition of them is a great advertisement, is it not?—We do not regard the matter from that point of view.

Mr. Thomson Hankey.

317. Have you not received directions from the Treasury that in future all expenditure, such as that for Loan Exhibitions, or all other than quite normal expenditure, is to be provided for under a separate sub-head?—I am quite aware of what the Committee said last year with regard to the Scientific Exhibition, and if there was any similar exhibition now, we should have a separate sub-head for it.

318. If the Committee still wish that to be done, do you see any difficulty in doing it?—Only this difficulty, that we shall have to employ our own people in carrying out these occasional exhibitions, and we shall have to charge the expenditure under certain heads of service, and the difficulty would be to say what portion of the expense of the attendants and of the police, and other items of charge, should be brought to account against this special exhibition, and what should be considered to be our normal expenditure.

319. If you could do it for a larger exhibition

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Mr. Welby, C.B.,  
Mr. Ryan, and  
Mr. MacLeod.

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#### APPROPRIATION ACCOUNTS—Class IV.

##### Vote 2.—Science and Art Department for the United Kingdom—*continued.*

Mr. Thomson Hankey—*continued.*

it will not be a great deal of additional trouble to make such an estimate for a smaller one if the Committee think it desirable, will it?—There would be no great trouble in doing it; it can be done undoubtedly if the Committee desire it.

Colonel Stanley.

320. I understand the distinction you draw to be this, that in case of a large exhibition you can probably frame your estimate with some accuracy, because you employ for the particular purposes of that exhibition a particular staff, and therefore you can frame your estimate for the salaries of that staff?—Yes.

321. But in the case of the smaller ones, among which, whether rightly or wrongly, this Exhibition of Scientific Apparatus appears to have been included, you have to take some of your existing staff, which you already employ for other purposes, and which you cannot specially tell off for the duties connected with that exhibition?—Yes.

322. And therefore you would have to take every sub-head to pieces?—Yes.

323. In a case where that practical difficulty might arise, would not the object of this Committee be attained almost equally well by appending a distinct statement of the expenditure to the Appropriation Account; there would be less difficulty, would there not, in doing that, inasmuch as you could always, after the fact, allot the particular salaries or portions of salaries of the officers you had employed for the purpose of such an exhibition?—If such an arrangement as that were agreeable to the Committee, I think it can be done.

Mr. Goldney.

324. Would not that amount to your department assuming the functions of Parliament?—No, I think not. Those exhibitions, which I hope will never again assume such a scale as that one of Scientific Apparatus, would be a portion of what I think Parliament perfectly understands that it is voting money for; that is to say, it is an exhibition of certain objects to the public, which do not belong to the department, but are on loan for a special purpose.

325. But this is not a case where you were within your estimate; you exceeded it by 13,000*l.*?—Yes, on those specific items which are given in the Appropriation Account we did.

326. Do you think that that is a right course to take?—No; I do not think it is right at all. I have already explained how it occurred, and it can never occur again.

327. Supposing the plan suggested by the Secretary to the Treasury were carried out, you would consider it incumbent on you to make the sum you put down large enough to include those items?—Yes.

328. Did you, or did you not, in the Estimates of 1876-77, intend to include a provision for this exhibition?—We did include a small sum under two sub-heads; we had at the time no conception that more would be required.

329. You intended to include it, but the expenditure became larger than your views and ideas of it had been?—Yes, precisely so.

#### APPROPRIATION ACCOUNTS—Class IV.

##### Vote 2.—Science and Art Department for the United Kingdom—*continued.*

Chairman.

330. (To Mr. Welby.) I believe there is a Treasury Minute recording their view of the whole of these transactions?—There is.

331. Would there be any objection to laying it before the Committee?—If the Committee call for it, I am prepared to put it in. (*The same was delivered in.*)

Mr. Goldney.

332. (To Mr. MacLeod.) Do you intend in the Estimates coming forward this year, to put a foot-note, saying that they are intended to embrace a Loan Exhibition at Bethnal Green?—I believe it is too late, because the Estimates are already printed.

333. You have done nothing of that kind?—No.

Mr. Seely.

334. Do you see any objection to doing so in future?—None whatever.

Chairman.

335. In paragraph 4, the Comptroller and Auditor General calls attention to the omission of a note in some cases, in which payments for extra services have been made to officers of the Science and Art Department out of other Votes; were you unable to communicate that information?—With regard to the first and second officers on the list the information is communicated in the Estimates for 1878-9, and will therefore appear before the House. With regard to the third, I was not aware that this gentleman was an officer of the Landed Estates Court in Ireland. He was in the receipt of 2*s.* an hour as Assistant Librarian for the Royal Dublin Society when employed.

336. Do you not consider that as an extra payment?—He is not a salaried officer of our Department; he is only employed casually by us.

337. He is a salaried officer of the Landed Estates Court?—Yes, I believe he is; I was not, however, aware that this gentleman was a salaried officer of any department.

338. As far as you can, you will, for the future, provide such information?—Certainly.

[Mr. MacLeod withdrew.]

On Vote 12.

#### PUBLIC EDUCATION, IRELAND.

339. (To Mr. Ryan.) With respect to paragraph 1 of the Report, the adjustments of the sub-heads which you suggested are agreed to by the department, are they not?—Yes, they are; but they are only questions as to sub-heads. It does not affect the total of the Vote; they are only questions of classification.

On Vote 14.

#### NATIONAL GALLERY OF IRELAND.

340. With respect to paragraph 2, can you state how long the porter there mentioned was employed irregularly without a certificate?—No, I am afraid I cannot say.

341 (To Mr. Welby.) Has any explanation been

## APPROPRIATION ACCOUNTS—Class IV.

Vote 14.—National Gallery of Ireland—*continued.**Chairman*—continued.

been afforded to the Treasury, why the condition on which the excess of expenditure under Sub-head D. was authorised has not been complied with?—I have not been able to ascertain that there was any further correspondence on the subject; if the Committee will allow me, I will enquire.

[The Vote was postponed.]

On Vote 16.

## THE QUEEN'S UNIVERSITY IN IRELAND.

*Lord Eslington.*

342. (To Mr. Ryan.) In paragraph 3 of the Report, the Comptroller and Auditor General says that "the accounting officer has again omitted to produce Treasury authority." Have

## APPROPRIATION ACCOUNTS—Class IV.

Vote 16.—The Queen's University in Ireland—*continued.**Lord Eslington*—continued.

you received any communication from him since? —We have not.

343. The Comptroller and Auditor General uses the word "again"; this has happened two years running?—Yes.

344. Who is the accounting officer?—Mr. Johnson Stoney. The account was rendered this time by Mr. O'Connor, because he was ill at the time.

345. (To Mr. Welby.) Has the attention of the accounting officer been called to this?—The attention of the accounting officer will be called to the matter by the Treasury, and I have no doubt by the next time the Committee meets I shall be able to state the reason which the accounting officer gives.

[The Vote was postponed.]

## CLASS V.

On Vote 2.—CONSULAR SERVICES.

Mr. FRANCIS B. ALSTON, called in; and Examined.

*Chairman.*

346. (To Mr. Alston.) The Comptroller and Auditor General reports, "as the Consul at Samoa having passed his examination on the 8th June 1877 did not sail for his post until the 19th September, I am unable to see how the payment of half salary to him between the 28th of February and the date of his certificate falls within either of the conditions required by the terms of the notice in the 'London Gazette,' of the 16th of January 1872." Can you explain the circumstances?—The circumstances are explained, to a certain extent, in the correspondence annexed to the Account of the Vote; but the concluding letter from the Treasury does not seem to have been appended by the Audit Office. In that letter the Treasury say that they "do not desire to insist upon the omission to refer Mr. Liardet's case to the Treasury as taking it out of the scope of the notice in the 'London Gazette,' of 16th January 1872, on the understanding that the required reference will be made to the Treasury in any such case hereafter at the proper time." Then the letter goes on to say, "If the correspondence be sent to the Comptroller and Auditor General, he will judge whether the payment of Mr. Liardet's salary is warranted, under the circumstances, for the time preceding the issue of his certificate. My Lords offer no objection to its being considered to be warranted in the case

*Chairman*—continued.

of an officer required to proceed abroad as soon as possible." The Comptroller and Auditor General's point seems to be that Mr. Liardet, after all, did not go until the 19th of September. The answer to that is, that he was awaiting his instructions. Those instructions were of rather an important and complicated character, and depended upon the proposed issue of an Order in Council, and until the instructions were ready for him he could not be sent away; that is the explanation.

347. It was not for his own convenience, but on account of the business of the Department that he stayed?—Certainly; he was retained by the Foreign Office.

348. From the time of his passing the examination?—From the time of his giving up his duties, and ceasing to work at the Foreign Office.

349. In paragraph 5, the Comptroller and Auditor General states that certain sums appear to have been paid to Consular officers out of the Diplomatic Vote, and a list of those sums are appended by him. Would it be possible for you in subsequent accounts, or in the estimates, to give this information, instead of leaving it to the Comptroller and Auditor General to provide it?—Yes.

[The Witnesses withdrew.]

Mr. Welby, C.B.,  
and Mr. Ryan.

27 February 1878.

Mr. Alston.



*Wednesday, 6th March 1878.*

MEMBERS PRESENT:

Lord Frederick Cavendish.  
Sir Walter Barttelot.  
Mr. Cubitt.  
Lord Eslington.  
Mr. Goldney.  
Mr. Thomson Hankey.

Sir John Lubbock.  
Sir Charles Mills.  
Mr. O'Reilly.  
Mr. Seely.  
Colonel Stanley.

LORD FREDERICK CAVENDISH, IN THE CHAIR.

CIVIL SERVICE APPROPRIATION ACCOUNTS.

Mr. REGINALD EARLE WELBY, C.B., and Mr. CHARLES LISTER RYAN, called in ;  
and further Examined.

*Chairman.*

350. (To Mr. Welby.) HAS any progress been made with respect to the general question of extra receipts, which we were informed last year the Treasury had then under their consideration?—Last year a scheme was drawn up by my colleague, Mr. Mills, and was brought under the consideration of certain authorities. Doubts were raised as to parts of that scheme, and the consequence was that the Treasury did not feel themselves in a position to lay it before the Committee during their sittings last year. Since the beginning of the present year a Committee under the Chairmanship of the Financial Secretary to the Treasury has been appointed, and is now sitting with a view to consider those criticisms, and by the examination of the officers of the different departments concerned to anticipate any objections that may be raised to the scheme, so as to be able to place it before the Committee in what the Treasury consider to be working order.

351. Is there any reason to hope that you will be able to submit the scheme in the present Session?—The Financial Secretary to the Treasury is at present holding meetings of this Committee twice a week; the progress of the Committee is, I think, satisfactory, and, I have great hopes that it will be in a position to report before the close of the Session, and in time to communicate the Report to this Committee.

CLASS II.

On Vote 8.—BOARD OF TRADE.

352. (To Mr. Ryan.) The Report of the Comptroller and Auditor General states that the expenditure under Sub-head I., "Law Charges," includes sums amounting to 24 l. 17 s., for which vouchers had not been furnished to him, and he proposed that some arrangement should be made for those vouchers being examined by his officers at the office of the Examiner of Criminal Law Accounts; has anything yet been done in that matter?—An officer of the Comptroller and

On Vote 8.—Board of Trade—*continued.*

*Chairman—continued.*

Auditor General attended at the Criminal Law Examiner's Office, who immediately furnished him with the vouchers, which he brought back, and having examined them we are satisfied that the charges may now be admitted.

On Vote 10.—CHARITY COMMISSION.

353. With respect to the sum of 12 s. 2 d. due to a third-class clerk of the Charity Office at the time of his resignation, is it admitted by the accounting officer that that sum has not been paid?—Yes; it was a sum due to the clerk which the accountant charged in his account, but which he had not actually paid to the clerk, therefore it has never been paid at all, and ought not to have been charged.

On Vote 20.

PATENT OFFICE AND MUSEUM OF PATENTS.

354. (To Mr. Welby.) You promised at our last meeting to obtain certain information with respect to the amount paid in by the Clerk of the Patents to the Exchequer for certain fees; have you obtained that information?—I have made inquiry upon the subject, which, I think, was mentioned by the honourable Member for Chippenham. I ought to say, first of all, that the question of the honourable Member related to fees upon patents on appointments, not upon patents for inventions, to which this Vote refers. Having just drawn that distinction, I have to say that, I have ascertained that the question of bringing these fees to account is under the consideration of the Treasury. At the present moment the law officers account for, and pay over to the Solicitor to the Treasury, through whose vote it passes to the Exchequer, the amount of the fees which they receive on patents on appointments. The whole of the fees received by them ought to be thus accounted for, with the exception of one fee which is retained by their clerk for his own use. The Treasury were not quite

Mr. Welby, c.b.,  
and Mr. Ryan.

6 March 1878.

## APPROPRIATION ACCOUNTS—Class II.

Vote 20.—Patent Office and Museum of Patents  
—continued.*Chairman*—continued.

quite satisfied with the arrangement, and they have under consideration at present a scheme for levying those fees by stamps, in which case the whole of the money due, by way of fee, would be paid into the Exchequer, while any sum payable to the clerk of the Attorney General would be paid out of the Vote. The scheme is not so far advanced as to be ready for publication, but as far as I can ascertain, that is likely to be the result of inquiry into the subject.

Lord *Eslington*.

355. Is that one excepted fee which is retained by the clerk a fee leviable on each appointment?—Yes, on each appointment.

On Vote 40.

## OFFICE OF PUBLIC WORKS, IRELAND.

*Chairman*.

356. Have you received any further information with respect to the appointment of Mr. Barrett as temporary messenger?—The Treasury, on

## APPROPRIATION ACCOUNTS—Class II.

Vote 40.—Office of Public Works, Ireland—  
continued.*Chairman*—continued.

the 17th July last, instructed the Board of Works to apply to the Civil Service Commissioners for a boy in place of Barrett. The Board accordingly did so, and on the 26th received a reply from the Civil Service Commissioners that they would be prepared to examine any candidate nominated by the Board of Works; but the Board of Works have failed to find a candidate. At present the rule of the department is, as laid down by the Treasury, that a boy should fill Barrett's place, but it appears that there is a great difficulty in finding a boy who is willing and able to accept the situation subject to the condition, that at the age of 19 he will be disqualified.

357. Can no steps be taken to prevent this unauthorised charge being continued, it having lasted now for nearly two years?—The requirements, as laid down in the rules of the Civil Service Commissioners, for boy messengers are very simple. It seems difficult to understand that it should be impossible to find a boy who could fill the place, but if that is really the case, the only thing that can be done is to alter the rule and substitute a man messenger for a boy.

Mr. *Welby*, C.B.,  
and Mr. *Ryan*.

6 March 1878.

## CLASS III.

## On Vote 7.—LONDON BANKRUPTCY COURT.

Mr. MANSFIELD PARKYNS, called in; and Examined.

358. THE Comptroller and Auditor General states in his Report that the Accountant for this Vote has omitted to explain the cause of variation between the estimated amount of extra receipts and the amount realised, and that his letter asking for such information has not been replied to?—Certainly, there was an omission, for which I personally apologise, in not replying to his letter. It arose in this manner: the Appropriation Account was sent in before the issue of the Treasury Minute. That was explained to the Comptroller and Auditor General, and the reason of the difference had been explained in a former letter of the 12th of December 1876. This is the reply from the Comptroller and Auditor General: "Although it is seen by your letter, dated 12th December 1876, that for the reasons therein stated, no strictly accurate estimate of Exchequer Extra Receipts can be made, I am, nevertheless, directed by the Comptroller and Auditor General to draw your attention to the circumstance that no note to that effect, or other explanation of the difference between the estimated and realised amounts of Exchequer Receipts has been made on the Appropriation Account of the Vote for the London Bankruptcy Court, 1876-77, with reference to the First Report of the Committee of Public Accounts on this subject, made during the last Session of Parliament (page 8, paragraph 51), and to the directions given to accounting officers at page 10 of the Treasury Minute thereon, dated 31st October 1877." We pointed out in our letter that the Appropriation Account had been sent in some days prior to the issue of the Treasury Minute, and suggested that if the

Account were returned, what was required would be entered in our office; the Exchequer and Audit Department wrote in reply, that it would not be convenient to return it, on account of the late period of the year, and that any explanation we had to offer as to the causes of variation between the estimated and the realised amounts of the extra receipts would, if communicated to the Audit Office, be appended to their Report on the Vote. That letter certainly ought to have been answered, but it appears that it was not. As explained to the Comptroller and Auditor General, we cannot correctly estimate these receipts; they are fees which are received by various officers on old bankruptcies, and they are paid in on affidavit. In one year they may amount to a large sum, and in another year they may be much less; it is impossible to correctly estimate them. That is the only answer that can be given, and it had been given; as to not replying to the Comptroller and Auditor General's letter, I can only apologise for the omission; it was an oversight.

[Mr. *Parkyns* withdrew.]Mr. *Parkyns*.

## CLASS IV.

## On Vote 14.

## NATIONAL GALLERY OF IRELAND.

359. (To Mr. *Welby*.) Have you received any further information with respect to the causes of the deficit upon this account?—In accordance with the wish of the Committee, I communicated after the last sitting with the Accounting Officer

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Mr. Welby, C.B.,  
and Mr. Ryan.

6 March 1878.

#### APPROPRIATION ACCOUNTS—Class IV.

##### Vote 14.—National Gallery of Ireland— *continued.*

*Chairman—continued.*

of the National Gallery in Ireland, and I have received a reply from him to the effect that last year when the end of March was approaching, he was anxious to take advantage of the permission conveyed in the letter from the Treasury, of which a copy is appended to the Comptroller and Auditor General's Report, and that he directed the clerk in charge of the accounts to make a careful calculation of the amount which it would be possible to save under other sub-heads of the Vote. The result was that they came to the conclusion that he might draw an order against the Vote for 40*l.*, which he did in favour of Messrs. Christie, to whom the money was due. Subsequently, when the accounts of the year were made up, it was found that they had underestimated the expenditure; it was then too late to correct it, and he expressed his regret that a miscalculation was made.

On Vote 16.

#### THE QUEEN'S UNIVERSITY IN IRELAND.

360. You promised also to obtain information from the Accounting Officer of this Vote; have you done so?—Yes. The Comptroller and Auditor General reported that the Accounting Officer had “again omitted to produce Treasury authority for the application of surpluses on certain Sub-heads to excesses of expenditure on other Sub-heads.” The Accounting Officer had duly applied to the Treasury for leave to apply surpluses to meet excesses on other Sub-heads, but it appears that he had omitted to inform the Comptroller and Auditor General that he had that authority. It is the duty of the Accounting Officer to inform the Comptroller and Auditor General when the leave of the Treasury has been obtained. I wrote to Mr. O'Connor, and he replied that he was ill at the time, and that it was entirely owing to an oversight that a communication was not made to the Comptroller and Auditor General, and that he would make it at once. I should think that in all probability the Comptroller and Auditor General has received it by this time, for I suggested to the Accounting Officer to send it, so that it might reach the Comptroller and Auditor General before the next meeting of the Committee.

#### CLASS V.

On Vote 5.

#### COMMISSIONS FOR SUPPRESSION OF THE SLAVE TRADE.

361. (To Mr. Ryan.) It is stated in the Report of the Comptroller and Auditor General, that “the amounts charged under Sub-heads C. and D. are insufficiently supported by vouchers; have any further vouchers been received by the Comptroller and Auditor General?—No; no further vouchers have been received.

#### APPROPRIATION ACCOUNTS—Class V.

##### Vote 5.—Commissions for Suppression of the Slave Trade—*continued.*

*Lord Eslington.*

362. They were returned to India, I think, in order to be corrected?—Yes, and they have not come back from India. The letter from the India Office, printed at the bottom of the page, gives all the information we have upon the subject.

*Chairman.*

363. (To Mr. Welby.) Do you know anything of these circumstances?—No, the Foreign Office accounts for the Vote. Perhaps the Committee will allow me to communicate with the Accounting Officer of the Foreign Office upon the subject.

On Vote 6.

#### TONNAGE BOUNTIES, &c., AND LIBERATED AFRICAN DEPARTMENT.

364. Can you state what was the cause of the long delay on the part of the India Office in making the claim for repayment of the compensation paid to the owners of the dhows. The original payments seems to have been made as far back as 1873?—I am not aware of any other reason for it than that, in the case of the Indian Accounts, they are a very long time in being made up, and the claims made upon the Government for the services for which India has to obtain payment from the Imperial Exchequer are constantly made very long after date.

*Lord Eslington.*

365. Have the Treasury called the attention of the Indian Government to these delays, and requested that the claims should be sent in with greater promptitude, according to the recommendation of the Comptroller and Auditor General?—The Treasury have not taken any steps upon this particular Report of the Comptroller and Auditor General; in fact, the time for doing so would be when the Treasury draw up their annual Minute dealing with the Report of this Committee.

366. Did not this Committee allude to this matter last year in their Report, and if so, have any steps been taken to carry out their recommendation?—In the Minute which I laid before the Committee last year will be found a letter directed to the War Office, in which the following paragraph occurs: “My Lords join with the Committee in hoping that arrangements may be made for lessening the delay in rendering the Indian Accounts, and for distributing the record of expenditure in the War Office books more evenly throughout the year.”

*Chairman.*

367. That letter was not communicated to the India Office, I think?—No, it was not.

#### CLASS VI.

On Vote 2.

#### MERCHANT SEAMEN'S FUND PENSIONS, &c.

368. (To Mr. Ryan.) Have vouchers yet been received for the payments mentioned in the Report, amounting to 11*l.* 3*s.*?—With respect to the

## APPROPRIATION ACCOUNTS—Class VI.

Vote 2.—Merchant Seamen's Fund Pensions, &c.  
—continued.

*Chairman*—continued.

the total sum of 19 *l.* 9 *s.* mentioned in the Report, of which the 11 *l.* 3 *s.* form a part, we are now enabled from subsequent information, the vouchers having been produced, to state that 12 *l.* 5 *s.* is properly chargeable against the Vote. There is

## APPROPRIATION ACCOUNTS—Class VI.

Vote 2.—Merchant Seamen's Fund Pensions, &c.  
—continued.

*Chairman*—continued.

still a sum of 7 *l.* 4 *s.*, which I understand the Board of Trade intend to endeavour to recover. That sum consists of payments made to unions for inmates contrary to the Board of Trade regulations.

Mr. Welby, C.B.,  
and Mr. Ryan.  
6 March 1878.

Mr. ROBERT GEORGE CROOKSHANK HAMILTON, called in; and further Examined.

*Chairman.*

369. Do you agree with the Comptroller and Auditor General that these payments of pensions to the amount of 7 *l.* 4 *s.*, were made in contravention of the regulations of the Board of Trade?—Yes; we were not aware at the time when the Appropriation Account was rendered that that was so; but we have since discovered that they were paid against our regulations, and we have disallowed the items.

370. (To Mr. Ryan.) Then I understand that proper authority has been produced with respect to the expenditure of 1 *l.* 2 *s.*?—Yes, that is included in the sum of 12 *l.* 5 *s.* which I have mentioned, as having been satisfactorily accounted for.

371. (To Mr. Hamilton.) What was the cause of the delay complained of by the Comptroller and Auditor General in the transmission of the accounts in respect of this service for his examination?—The cause was this: this was the first year in which the Board of Trade examined these accounts; they were previously examined by the War Office, and we simply accepted their examination. In this year we undertook the examination in detail ourselves, and many questions arose which delayed the presentation of the accounts to the Comptroller and Auditor General. We have now made an arrangement with the War Office, by means of which we shall be enabled to communicate directly with the staff officers of pensioners, instead of communicating with them through the War Office, and I hope that this year we shall have the accounts sent in at a much earlier date.

Lord Eslington.

372. But how came War Office pensioners to have any claim upon, or to be in any way connected with the Merchant Seamen's Fund?—There is no connection between War Office pensioners and Merchant Seamen pensioners. We simply employ the staff officers of pensioners who are officers of the War Office to make the payments to the merchant seamen pensioners.

373. Has that long been the practice?—That has been the practice ever since the Board of Trade took over the payment of these pensions. The staff officers of pensioners who are War Office officers, pay all the pensions which are payable by the War Office, the Admiralty, and the Board of Trade.

374. All over the country?—Yes, all over the country.

Mr. Seely.

375. I see you have paid certain pensions quarterly in advance?—Yes.

376. And you justify that by the provisions of 0.9.

Mr. Seely—continued.

the Seamen's Fund Winding-up Act of 1851?—Yes.

377. Are you obliged by that Act of Parliament to do so, or have you a discretionary power to do it or not to do it?—By that Act the Board of Trade has the power to fix the times at which the pensions are paid.

378. But my question is, are you obliged to pay in advance?—No.

379. What is the reason that you pay these pensions in advance, contrary, according to the Comptroller and Auditor General, to the practice of other departments?—It is in accord with the practice of all other departments; all pensions are paid in advance for the War Office and for the Admiralty, as well as for ourselves.

380. (To Mr. Ryan.) Have you any remark to make upon that?—The observation in the Report refers to the Civil Services, and this is the only case that I am aware of in which such payments out of Civil Service Votes are made in advance. I am aware that the Chelsea pensioners and the Greenwich pensioners are also paid in advance.

381. The pensions alluded to in paragraph 2 of the Report are Civil Service Pensions?—Yes, they are pensions charged upon a Civil Service Vote. (Mr. Hamilton.) You will observe in the last paragraph but one of the letter, printed at the foot of the page, that the Board of Trade "at the same time resolved," that is, when they paid pensions in advance, "that it would be fair alike to the Vote and to the pensioners that in consideration of the loss to the Vote from deaths during a month for which payment had been made, new pensions should not commence to be due, or to be paid until the first day of the quarter following the day on which the pension was granted."

*Chairman.*

382-3. Upon the whole then you would say that the charge upon the public is much the same as if these pensions were not paid until they became due?—I should say so.

Sir Walter Barttelot.

384. Of course, in making the quarterly payments you pay up the arrears of pension to the man from the time it was granted?—We delay the date at which the pension accrues for a quarter.

385. Then the fact is that a man just getting a pension has to suffer for the benefit of a man who has just died?—Not so; he benefits when he dies, or rather he has had the benefit then, as the pension being payable in advance he has been paid beyond the date of his death.

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386. (To

Mr. Welby, C.B.,  
Mr. Ryan, and  
Mr. Hamilton.

6 March 1878.

# APPROPRIATION ACCOUNTS—Class VI.

## On Vote 3.

### RELIEF OF DISTRESSED BRITISH SEAMEN ABROAD.

*Chairman.*

386. (To Mr. Ryan.) Have vouchers yet been received with respect to the various charges amounting to 14 l. 4 s. 4 d. mentioned in the Report?—Vouchers have been received for a sum of 9 l. 4 s. 4 d., but not for a sum of 5 l.

387. (To Mr. Hamilton.) Can you explain why those vouchers for 5 l. have not been furnished?—We have asked the Consul to furnish the sub-voucher for this amount, but he has not done so. We hold that a sub-voucher in this case is not necessary. The circumstances are these: the expense was incurred for the maintenance of five distressed seamen at Helsingfors for a period of four days. We have evidence, which has been before the Comptroller and Auditor General, that these men came into charge after being shipwrecked on the day for which the charge commences. We have also evidence that these men were sent from Helsingfors to this country on the day following that on which the charge ceases. The rate is the usual rate charged at this port. We have the signature of every man in acknowledgment of his having been at the port during the period, and we have this certificate from the consul, dated 24th November 1876 :—"I hereby certify that the above account is correct, that the amounts charged therein have been expended by me solely for the public service, and that the expenditure was absolutely necessary. I further certify that the rates and prices charged were the lowest possible." It is our custom to call for a sub-voucher, but the sub-voucher wanting in this case is the actual receipt of the boarding-house keeper who boarded these men, and we think that we have sufficient evidence to support the charge without the sub-voucher, and we also think that it is very important, where a charge is a proper charge against a Vote, that it should appear in the account of that Vote, and that it should not be kept over for any technical objection to the next year.

388. What was the cause of the delay in furnishing the sub-voucher?—We have sent two queries asking for the sub-voucher, but we have not received any reply to either of them.

389. Did you send those inquiries some time ago?—Yes. We sent one since the Comptroller and Auditor General's Report came out, and one before.

390. (To Mr. Ryan.) Do you consider that the evidence of this payment, which has now been furnished by Mr. Hamilton, would be sufficient to justify the Comptroller and Auditor General in passing the account?—The Comptroller and Auditor General would not consider the evidence which Mr. Hamilton has given just now as sufficient to enable him to pass the payment in question. He had that evidence before him at the time when he said in his Report that vouchers were not forthcoming, and consequently had he been satisfied that the view which Mr. Hamilton takes is one that he could properly adopt, he would not have reported this sum at all. The Board of Trade instructions themselves require that these sub-vouchers should be produced, and without this sub-voucher there is no proof to show that

# APPROPRIATION ACCOUNTS—Class VI.

## Vote 3.—Relief of Distressed British Seamen Abroad—continued.

*Chairman—continued.*

the boarding-house keeper has ever received the money; there is nothing to prevent a subsequent claim being made and the money paid over again. In any case these certificates of consuls and so on, are part of the ordinary vouchers which are produced in all cases, and if we were to accept such evidence in this particular case, we might accept it in 99 cases out of 100 in the ordinary examination of the account. It has always been held, therefore, that supporting vouchers should be produced in these cases.

391. (To Mr. Hamilton.) There can be no difficulty about procuring the sub-voucher in this case?—There ought to be no difficulty. I may say, however, that it does not necessarily follow that there is a sub-voucher; it is conceivable, and it is the case in many instances, that instead of the men being boarded by a boarding-house keeper they get the money paid into their own hands for them to find their own lodging. With regard to the suggestion of a further payment, that could not possibly occur. If the boarding-house keeper had not been paid, we certainly should not pay the consul again for the same service.

392. Are these sums ever paid directly to the seamen?—Yes.

393. In that case what evidence do you furnish to the Comptroller and Auditor General?—It would probably be stated upon the account that that was so, and then the Comptroller and Auditor General would accept the signature of the men upon the sheet as the voucher.

394. But it was not so stated in this case?—No, it is not so stated here.

*Lord Eslington.*

395. Have the Treasury ever called the attention of the Board of Trade to this very heavy item; it is an annual charge of 33,000 l. for the relief of distressed British seamen abroad?—We have had a good deal of correspondence with the Treasury at the time of sending in our Estimates, and we have lately rather reduced the cost, notwithstanding that the prices of the seamen's subsistence have risen at all ports abroad, and notwithstanding, also, that we have been obliged to raise our rates of conveyance; in fact, to double them for bringing the men to this country.

396. But, as a matter of fact, does not the main portion, or a very large portion of this heavy annual charge, arise from the circumstance of debauched, and debilitated, and sickly seamen being shipped, who fall ill, and who are obliged to leave their ships and remain at foreign ports, whence they are brought home at the public expense?—That is so to a very large extent. I should say that the largest item of expense arose from shipwrecks; but to a very large extent the expenditure does arise from circumstances such as your Lordship mentions.

397. Have any steps been taken by the Board of Trade by communicating with shipowners or others to endeavour to remedy that which is really a national disgrace?—There have been proposals with reference to the inspection of seamen before they sign; a proposal of this kind has been

## APPROPRIATION ACCOUNTS—Class VI.

Vote 3.—Relief of Distressed British Seamen Abroad—*continued*.

Lord *Eslington*—*continued*.

been made, but I do not think it has ever even found its way into a Bill, that where shipowners have got a medical certificate of the fitness of a man, then if he afterwards falls sick, we should bear any cost, and that where such a certificate has not been obtained the owner should bear it.

[Mr. *Hamilton* withdrew.

## CLASS VII.

## On Vote 1.—TEMPORARY COMMISSIONS.

*Chairman*.

398. (To Mr. *Welly*.) With respect to the Incidental Expenses, mentioned in the 4th paragraph of the Report of the Comptroller and Auditor General, was the expenditure on entertainments given by the British Executive Commissioners sanctioned by the Treasury?—Yes.

On Vote 6.

## REPAYMENTS TO THE CIVIL CONTINGENCIES FUND.

399. Has any further reply been received from Mr. Johnson to the Treasury Letter of the 4th December last?—On the 27th December a letter was received from Mr. Johnson forwarding further vouchers amounting to 57 *l.* 16 *s.* 3 *d.*, for which allowance was made by the Treasury, and Mr. Johnson was informed that the Treasury had to point out to him "that the Comptroller and

## APPROPRIATION ACCOUNTS—Class VII.

Vote 6.—Repayments to the Civil Contingencies Fund—*continued*.

Mr. *Welly*, C.B.,  
Mr. *Ryan*, and  
Mr. *Hamilton*.

6 March 1878.

*Chairman*—*continued*.

Auditor General has again brought under the notice of Parliament the disallowance of 135 *l.*, and it follows that the subject will again come before the Public Accounts Committee in the present Session." The Treasury therefore requested that the Secretary of the Commission would report to the Board not later than April next as to the balance now standing against him, amounting to 77 *l.* 3 *s.* 11 *d.* I should add that the Treasury should properly have informed the Comptroller and Auditor General of these further vouchers having been received at that time. I regret that we omitted to do so.

400. Have the vouchers now been furnished to the Comptroller and Auditor General?—Yes, for all but 57 *l.* 16 *s.* 3 *d.* The Treasury allowed Mr. Johnson a further period of three months to collect further vouchers, if possible.

401. Were those vouchers satisfactory?—They were so far satisfactory that the Treasury could admit them against the Vote; they will of course forward them to the Comptroller and Auditor General, and it will be for him to say whether he thinks that we were justified in accepting them. At present the Treasury have taken the responsibility of that portion of the expenditure.

402. Of that part, not of the whole?—I must correct myself there. The Treasury are obliged to take the responsibility of the whole as the Accountants of the Vote; but they have stated that, so far as the 57 *l.* odd is concerned, they consider the vouchers satisfactory.

403. From what date were three months allowed to the Accountant to collect further vouchers?—The letter which I have quoted is dated the 30th January.

## REVENUE DEPARTMENTS AND POST OFFICE PACKET AND TELEGRAPH SERVICES.

## On Vote 1.—CUSTOMS.

Mr. JOHN JENNER WEIR, called in; and Examined.

*Chairman*.

404. (To Mr. *Weir*.) It is stated in the 2nd paragraph of the Report of the Comptroller and Auditor General, that provision is not made for certain payments included under Sub-head E. 1, "Salaries, Solicitor's Office." Why was provision not so made?—I do not prepare the Estimates. I only have to deal with the Appropriation Account; but the Attorney General's and Counsel's fees were considered to be estimated under E. 2, which is for the General Law Charges. In making the Appropriation Account I myself put them under the head of Salaries, in accordance with the Treasury directions at that time; but since then, they being of a temporary character, I think they would be perhaps more correctly classified under E. 2. As regards the allowance to the Registrar of Licensed Lightermen and Carmen, that is clearly an omis-

*Chairman*—*continued*.

sion in the Estimate. The extra pay of messengers in the Solicitor's office was not dissected out from the general Estimate which was taken for that class of work; but was estimated with the general extra pay of messengers in London. The fees to the Lord Advocate of Scotland and his clerk were estimated before as part of the general law charges, but are now included in the Estimate under Sub-head E. 1. Before they were in the Estimate for E. 2. The same remark applies to the salaries of the agent for Scottish law and to the salaries of messengers in the Solicitor's office; so that the difficulty with those last three items will not occur again. The reason why they were transferred to the heading E. 1, was because they are permanent; but, as you will see in the case of the Attorney General's and Counsel's fees, we might not have an expense

Mr. *Weir*.

Mr. Welby, C.B.,  
Mr. Ryan, and  
Mr. Weir.

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# REVENUE DEPARTMENTS, &c.

## Vote 1.—Customs—continued.

*Chairman*—continued.

of that kind incurred during the year, and it is of a temporary character; and therefore I think it is more correctly classified under E. 2.

405. Both in the Estimate and in the Account?—Yes, in both the Estimate and the Account, and that would be in accordance with the recent Treasury directions, under date of the 12th of May 1877 on the subject, those payments being of a temporary character.

406. (To Mr. Ryan.) Do those arrangements meet with the approval of the Comptroller and Auditor General?—Yes; the main object of the Comptroller and Auditor General, in this paragraph, was to call attention to a diversity of practice between the Revenue Departments.

407. (To Mr. Welby.) It is suggested by the Comptroller and Auditor General that the rule now followed with regard to the Customs should be extended to the other two great Revenue Departments, namely, the Inland Revenue and the Post Office; should you concur in that view?—The Treasury have no objection to offer to the view taken by the Comptroller and Auditor General so far as it can be carried out; indeed, their object in making the alteration with regard to the Customs was to bring all the law charges together. When they came to look subsequently at the estimate for the Inland Revenue, they observed that they could not bring the different solicitors' departments at Edinburgh and London in the same shape into one portion of the estimate. At that time the Solicitor for the Inland Revenue was also Comptroller of Stamps and Taxes, which was not a legal office, therefore there was a practical objection to doing so in the case of the Inland Revenue; and in the case of the Post Office, there is, I believe, a solicitor both in London and also in Dublin, and in Edinburgh, consequently it is difficult in that case, also, to bring them within one estimate. Up to the present time the Treasury have not seen a way of overcoming the difficulty; therefore I have to plead that they are barred by practical difficulties from giving effect to the view expressed by the Comptroller and Auditor General.

*Mr. Goldney.*

408. (To Mr. Weir.) With regard to the Sub-head C. 3, for rent at Liverpool, it is stated that that was "short estimated, a considerable sum for arrears of rent having been paid this year?"—Yes.

409. In the estimate, I see you reduce the amount charged for rent in the previous year by about one-half; you put down 3,620 *l.* instead of 7,000 *l.*; did you not know of those arrears then?—As I explained just now, I do not prepare the

# REVENUE DEPARTMENTS, &c.

## Vote 1.—Customs—continued.

*Mr. Goldney*—continued.

Estimates myself, and I can scarcely answer a question with regard to their preparation; but I believe in the case of that rent, there had been disputes for some years about the sum payable, and it had been outstanding for some time. There are no arrears now.

410. Would not that properly form the subject of a separate Vote, a Supplementary Vote?—I think not; if I had the permission of the Treasury to apply the savings under one head to meet the excesses on another.

411. And you had that permission?—Yes, I had it in all those cases.

412. But with reference to these rents, have you not some tabulated statement of them?—Yes, completely; we had at that time the means of ascertaining, in all cases, the amount of the rents that were payable, but they are now entirely removed from our control, and placed under the Board of Works.

413. When these Estimates were prepared, you knew, or your office knew, of these arrears?—They must have known about the rents generally.

414. It is not the general rents that I speak of, it is the specific rent for Liverpool; you have a large item under Sub-head D. for general rent, amounting to 12,000 *l.* or 13,000 *l.*; but these are specific rents in Liverpool, and when the Vote comes before Parliament you reduce the amount from 7,000 *l.* to an item of 3,620 *l.*, as if it reported to be a tabulated rental; you see what I mean?—Yes; the reduction was caused by the expiry of the lease of the tobacco warehouse at Liverpool.

415. In the preceding year the sum you had put in the Estimates was 7,000 *l.*?—Yes.

416. I want to know why the Estimates for this year were framed in that way?—I am afraid, as I did not prepare the estimates, I cannot answer the question.

417. Do you know anything about these arrears; I mean about the payment of them?—I do not recollect the specific case.

418. You say you are able to state now that there are no arrears?—There are no arrears now that I am aware of at all, that is quite certain. I cannot quite charge my mind with the circumstances of that particular case, because it is one on which I have not prepared myself to answer at all.

419. Is that 3,620 *l.* a fixed rental, or is it variable?—I apprehend that it would be the sum annually charged.

420. A fixed rental?—I apprehend so. Mr. Dick, the clerk in charge of the accounts, knows more about the matter than I do.

Mr. WILLIAM DICK, called in; and Examined.

*Mr. Goldney.*

421. THERE was a great reduction made in respect to the specific rent under C. 3, for which 3,620 *l.* was put down in the estimate for 1876-77, though much more was spent?—The reason why such a large sum was expended in that year, was that there had been a question between the Customs and the Mersey Docks and Harbour

*Mr. Goldney*—continued.

Board, who were preparing premises for the Customs. At the time the estimate was framed, there was a dispute upon that matter, and we did not know when the rents would commence. It so happened that they came into payment this year, but they might have run on into another year.

422. Then it was not an arrear?—Not strictly; they

Mr. Dick.

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Vote 1.—Customs—continued.

Mr. Goldney—continued.

they were arrears in a certain sense, but they were not due until the Mersey Docks and Harbour Board and the Board of Customs came to an understanding.

423. Is the annual rent now 3,620 l. or 4,978 l.?—£. 3,620; but I should explain that all these charges have disappeared from the Customs; they are now under the Board of Works, and they will not appear in next year's accounts, or in our Estimates at all.

424. If I understand you rightly, you say that this increase of nearly 2,000 l. arose from new works having been executed, and that you did not think that the rent for these premises would come into this year?—No; we were not aware that it would.

425. Would not that be an increase instead of an arrear?—It is an increase upon the year, but this payment is for more than 12 months. I think it went over two or three years before the ques-

REVENUE DEPARTMENTS, &c.

Vote 1.—Customs—continued.

Mr. Goldney—continued.

tion was thoroughly settled.

426. You think that the tabulated rent is now 3,620 l.?—Yes.

Colonel Stanley.

427. It was a question which had been pending for some time, and the payment was not made until it was settled?—Quite so; it was pending for two or three years.

[Mr. Weir and Mr. Dick withdrew.]

On Vote 2.—INLAND REVENUE.

Chairman.

428. (To Mr. Ryan.) Has the Treasury authority for the payment of 10 l. mentioned in paragraph 6 of the Report of the Comptroller and Auditor General now been obtained?—Yes, it has.

On Vote 3.—POST OFFICE.

Mr. STEVENSON A. BLACKWOOD called in; and Examined.

Chairman.

429. Has any further progress been made with respect to the examination of London District and Provincial Post Office Accounts as to Treasury authority?—The matter has not advanced beyond the point stated in the letter from the Post Office, quoted in the Report of the Comptroller and Auditor General. A scheme was submitted to the Treasury, but nothing definite has been decided yet.

430. That letter was of the date of December 1876?—Yes.

431. Is the subject under consideration, or has it been entirely put aside?—It is with the Treasury now.

432. (To Mr. Welby.) Can you state whether any progress has been made with respect to this question?—It is a very technical question, and the Treasury have been anxious to have some assistance in arriving at a conclusion upon it, and they have instructed Mr. Mills and myself, as the Treasury officers of accounts, to confer with the financial officers of the Post Office upon the subject, and practically it stands over for as early an opportunity as we can find to make this inquiry.

433. (To Mr. Blackwood.) With respect to the question mentioned in paragraph 4 of the Report, the Committee was informed last year that steps were to be taken with a view to adopt a simpler form of remuneration for these officers; has any progress been made with reference to that scheme?—I think the question stands in much the same position as the previous one.

434. It also is under the consideration of the Treasury?—Yes.

Colonel Stanley.

435. (To Mr. Welby.) It has been proposed, has it not, that some inter-departmental committee should be appointed on that subject?—The Treasury understand that the Postmaster General has a decided opinion upon the subject, 0.9.

Colonel Stanley—continued.

and in presence of that opinion they have not liked to come to a decision without a fuller and further inquiry than they have yet had an opportunity of making. They have suggested that an inter-departmental committee will probably be the best means of arriving at the solution of it. That committee has not yet been appointed, but its appointment will be submitted to the Postmaster General, with a view to seeing whether he coincides in the proposal of the Treasury.

Chairman.

436. (To Mr. Blackwood.) Has any decision yet been arrived at with respect to the manner of equalising the cost of management and the receipts of the annuity business?—Not yet, some communications have taken place between the Treasury, the National Debt Commissioners, and the Post Office, but no decision has yet been arrived at.

437. Is any decision likely to be arrived at?—I am in hopes that it may be soon. I think in that matter again the initiative rests with the Treasury at the present moment.

438. (To Mr. Welby.) The question is under the consideration of the Treasury?—Yes, it is under the consideration of the Treasury at the present time.

439. Would it be referred to the same departmental committee?—No; as far as I am able to express an opinion, the inquiry is of a different kind, and therefore would not naturally come before the same committee. It is a very difficult question to decide.

440. (To Mr. Blackwood.) It is stated in the Report of the Comptroller and Auditor General that "The excess of expenditure over receipts, with regard to Insurances, is caused by the omission of the Commissioners of the National Debt to pay the balance due by them on account of cost of management incurred by the Post Office."

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Mr. Welby, C.B., Mr. Ryan, Mr. Weir, and Mr. Dick.

6 March 1878.

Mr. Blackwood.



Mr. Welby, c.b.,  
Mr. Ryan, and Mr.  
Blackwood.

## REVENUE DEPARTMENTS, &amp;c.

## Vote 3.—Post Office—continued.

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Chairman—continued.

Why has this payment not been made?—I think that the omission has been rather on the part of the Post Office than on that of the Commissioners of the National Debt. The Post Office omitted to apply for the balance due, under the impression that it would be better to defer it until the whole question was settled, but application has been made, and I have no doubt we shall receive the funds immediately.

441. Application has been made now?—Yes.

442. (To Mr. Welby.) The question of the apportionment of a rent between the Postal and Telegraph Votes for Post Offices, is stated to be under the consideration of the Treasury; has any decision yet been arrived at?—I understand that the Postmaster General and the Treasury are in communication upon the subject, and that it is proposed that the Postmaster General himself, and the authorities of the Treasury, shall have a meeting to decide the principle upon which this question shall be settled, and that meeting has not yet taken place.

443. It is stated in the Report that the question has been laid before the Treasury for instructions on the point?—Yes.

444. (Mr. Seely.) It is stated in the report that the Treasury say that the only sound principle to be adopted is to charge a fair proportion to the Telegraphs as well as to the Post Office?—Quite so, that is the Treasury statement, and it is with a view of carrying out the apportionment that this meeting between the Postmaster General and the Treasury is proposed.

445. Do you think you are likely to be in a position, in the course of two or three months, to give more definite answers to these questions?—With regard to the last, I do not see, as far as I am aware, why a definite answer should not be given shortly. With regard to the question as to the annuities, there are several questions of a very technical, and at the same time of an important character, to which this question has given rise, and it would not be in my power to say that their settlement will be immediate. With regard to the two other questions, there are really now so few questions outstanding between the Post Office and the Treasury that I should hope that the Treasury will be in a position to settle them very shortly.

446. (To Mr. Ryan.) Does the Comptroller and Auditor General agree with the opinion expressed by the Treasury, that the practice with respect to the employment of persons temporarily, without Civil Service certificates, falls within the provisions and regulations of the "London Gazette" of the 16th January 1872?—The Comptroller and Auditor General thinks that there would be considerable difficulty in bringing it within the definition of the notice in the "Gazette," inasmuch as that requires the previous approval of the Treasury to the filling of the vacancy, and also that the employment should cease as soon as the Civil Service Commissioners are enabled to supply a person. There may, no doubt, be a difficulty on the part of the Post Office in arranging these employments under the Order in Council, but what the Comptroller and Auditor General does think is, that it is wrong that this practice should go on, as it does to a considerable extent, without authority, and the question is,

## REVENUE DEPARTMENTS, &amp;c.

## Vote 3.—Post Office—continued.

Chairman—continued.

what should be the method of putting these so-called necessary temporary appointments on a proper footing as regards authority.

447. (To Mr. Welby.) Is it the opinion of the Treasury that this question is in a satisfactory position?—The Treasury have held that the order to which reference is made gives sufficient authority. Perhaps the Committee would like to hear the paragraph of the order relating to the subject: "All situations in which it may become necessary, in order to meet the exigencies of the public service, to employ temporarily so long as that necessity lasts, persons who have not been certificated or registered by the Civil Service Commissioners, provided that such employment have the previous approval of the Treasury, be reported at once by the chief authorities of the department in which it occurs to the said Civil Service Commissioners, and be discontinued as soon as such Commissioners are able to supply the Service conformably to the Order in Council of 4th June 1870, or 19th August 1871, as applicable to each case."

448. In those cases it is not intended to make temporary appointments, but only to employ persons for a short time until they obtain certificates?—Yes, such places are to be added to Schedule B., which exempts persons holding the place from the necessity of getting a certificate by examination.

Mr. O'Reilly.

449. Am I right in understanding you as saying that, in fact, the person is appointed temporarily until it is tried whether he will get a certificate or not?—Yes, provided that *bona fide* he is only employed temporarily he may be employed, and gazetted in Schedule B., in which case a certificate is not required.

450. But would you take it that, under the paragraph you have just read, it is necessary to obtain the Treasury sanction to each case as it occurs?—Yes.

451. That would be a difficulty for the Post Office, would it not; or do the Treasury conceive that a general authorisation from the Treasury could be given under the paragraph which you have just read?—The Treasury have to give their sanction, but of course in a case of great emergency, or in dealing with a number of persons, it would be for the Treasury to decide in what form they would give their sanction. There is nothing to require that the Treasury sanction should be given to each case as it occurs.

452. Do you understand that the paragraph which you have just read contemplates the Treasury sanction being generally given to a class of appointments; does it not rather contemplate the Treasury sanction being given to the individual appointment in each case?—I should say that the order contemplates the Treasury sanction being given to the appointment in each case.

453. It would be rather a straining of it, would it not, to apply for a general Treasury sanction to a class of appointments?—It would be desirable to avoid stretching the order at all.

454. (To Mr. Ryan.) Am I right in thinking that that would be the view of the Comptroller and Auditor General?—Clearly. The Comptroller

## REVENUE DEPARTMENTS, &amp;c.

Vote 3.—Post Office—*continued*.Mr. O'Reilly—*continued*.

roller and Auditor General would not consider that that order in the Gazette would meet a class of situations like this. It has been hitherto understood on our part as intended not to apply to a very large class of situations such as the Post Office have in view, but to apply to each individual case.

455. (To Mr. Blackwood.) Would it not be well to have some steps taken to make regular this class of appointments which clearly must be necessary, as a class, and not as an exceptional case?—The Postmaster General is of opinion that the Order in Council does not exactly meet the case in point. He proposed in a letter quoted in the Comptroller and Auditor General's Report, that these temporary appointments, or appointments previous to obtaining a certificate, should be reported to the Treasury at the end of every six months, and that the Treasury should give their covering sanction; he thought that that would meet the case. There is another objection which he entertains to the applicability of the Order in Council, namely, the fact that it provides that the vacancy shall be supplied by the Civil Service Commissioners. Now in the case of all these appointments, the Civil Service Commissioners have nothing whatever to do with them; the vacancies are supplied on the nomination of the Postmaster General.

456. In fact, on the whole, does not it appear that the paragraph in the Order is not intended to cover this class of cases, and that they had better be provided for in some other way?—I think so myself.

457. (To Mr. Ryan.) Have you any observation to make upon that?—Perhaps I may be allowed to observe that the Order in Council of June 1870 is very specific; it says that no person shall be employed in the Civil Service either permanently or temporarily without a Civil Service certificate unless he is exempted by being placed in Schedule B. of that Order; consequently a reference to the Treasury for a covering sanction would not meet the objection. The employment must be authorised in some way in accordance with the provisions of the Order in Council.

Mr. Goldney.

458. What would happen supposing the covering sanction of the Treasury contained all the names of the persons employed?—A covering sanction of the Treasury would not affect our point at all.

459. Supposing the Treasury did not give it, what would be the consequence as regards the salaries?—As the matter stands, if we were to act strictly, we should be bound to disallow all these salaries; they are not authorised by the Order in Council, and consequently the amounts are not payable to the individuals who have received them.

460. But with the covering sanction of the Treasury you hold that you can pass them, and you do so?—We should not hold that the Treasury can give a covering sanction; if the payment is not in accordance with the Order in Council, it is not within their power to give a covering sanction.

461. As matters stand, you really pass those

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## REVENUE DEPARTMENTS, &amp;c.

Vote 3.—Post Office—*continued*.Mr. Goldney—*continued*.

salaries?—Yes, we really pass them, because they apply to a large number of persons who have done the duty for which they have been paid, and consequently it would be an absurdity to disallow the payments. At the same time it is not a right thing that it should continue, and it ought to be altered.

Lord Eslington.

462. (To Mr. Welby.) The persons who are put under Schedule B. are held to be persons charged on the establishment, are they not?—N, that is not the meaning of it. It is not necessary to undergo a Civil Service examination in order to receive a Civil Service certificate; that is all that placing in Schedule B. means.

Chairman.

463. (To Mr. Blackwood.) Did I rightly understand you to say that a proposal had been made by the Postmaster General to the Treasury to meet these cases?—Yes; and that proposal was answered by a letter from the Treasury which is referred to by the Comptroller and Auditor General, and which intimated the opinion of the Treasury that the Order in Council would cover these cases.

464. (To Mr. Welby.) Any new arrangement with respect to this point will require a new Order in Council, will it not?—The truth is that there is an issue of fact between the Comptroller and Auditor General and the Treasury. The Comptroller and Auditor General holds that the Order of the 13th January 1872, does not cover the case; the Treasury holds that it does. I do not know where the decision is to be sought for.

## On Vote 4.—POST OFFICE PACKET SERVICE.

Chairman.

465. (To Mr. Blackwood.) What has been the cause of the long delay, extending over three years, in referring the question with respect to the Royal Mail Steam Packet Company to arbitration?—That has arisen partly from the fact that the counsel to whom the question was referred took some time to give their final opinion, and partly from the fact that some large questions of account are involved which require a great deal of careful investigation; they are being proceeded with as rapidly as possible, and it is hoped that they will soon be pushed to a conclusion, and then the case will be ripe for arbitration.

466. It appears to have been stated in September 1875 that the examination of the accounts was to be very soon begun; when was it begun?—That was stated; but since that time counsel was of opinion that the accounts of some subsequent years ought to be gone into in order to make the investigation complete, and it is the investigation of the accounts of those subsequent years that is now being pursued.

467. Is the matter then nearly ripe for arbitration?—I hope so.

Mr. Goldney.

468–70. Has there been any sum received since 1868 from the Royal Mail Steam Packet Company?

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Mr. Welby, C.B.,  
Mr. Ryan, and Mr.  
Blackwood.

6 March 1878.



Mr. Welby, C.B.,  
Mr. Ryan, and Mr.  
Blackwood.

## REVENUE DEPARTMENTS, &amp;c.

## Vote 4.—Post Office Packet Service—continued.

6 March 1878.

Mr. Goldney—continued.

pany?—Under the contract of 1868, which terminated on 31st December 1874, the Company have paid, as the Post Office share of their profits, the following sums: For the year 1871, 6,329*l.* 2*s.* 11*d.*; for the year 1872, 34,879*l.* 7*s.* 7*d.*; for the year 1873, 4,892*l.* 19*s.* 7*d.*; in all, 46,101*l.* 10*s.* 1*d.* We do not admit that the sums paid are correct, or that the Post Office is not entitled to a share of the profits of 1874.

Lord Eslington.

471. Do you expect that the further examination of the accounts for the years 1872, 1873, and 1874, will shortly be completed?—I hope so.

Mr. Seely.

472. On Sub-head D. of this Vote, I notice that there is a sum of 4,509*l.* 10*s.* paid more than granted, and the explanation is, that “the contract with the Union Steamship Company terminated during the year, and new arrangements became necessary;” what was the amount of the annual payment under that contract?—I see by looking at the Estimates that it was 15,000*l.*

473. That was the contract for the year?—For that portion of the year 1876-77 for which the contract provided.

474. How did the excess of 4,500*l.* odd arise?—It was found necessary to extend the contract for the Cape of Good Hope Service for three months beyond the time originally fixed, and the additional expense so caused amounted to 4,097*l.* Further, an increase of correspondence has led to the amount granted in respect of the West Coast Service, which is provided for under the same sub-head, having been exceeded by the sum of 412*l.*

475. When you applied for the Vote, could you not have foreseen that that would be necessary?—It was impossible. The circumstances which arose could not be foreseen.

476. Under Sub-head E., there is a payment of 2,200*l.* more than granted, and the explanation is, that “The penalties incurred were less than the amount estimated;” do you deduct from the amount required for the payment to the Company whatever you suppose the penalties will amount to in the course of the year?—Yes, that is deducted on the face of the estimate.

477. Then the better the service is performed the more there appears deficient?—It might have that result; in fact it has that result.

478. Would it not be better to take the full sum required, and pay over as extra receipts the amount of penalties incurred during the year?—That is an arrangement which might be made. It would only result in a larger amount having to be voted.

479. You require a certain amount for the payment, and supposing there were no penalties, the whole of that amount would have to be paid?—Yes; the amount of penalties is estimated by the average of what has been payable in former years, and it has generally been found sufficient.

480. Surely, the proper way of making out the estimate and the account, would be to take the amount you are liable for, and then if you get a return for penalties, that amount should be looked upon as an extra receipt, and paid into the Ex-

## REVENUE DEPARTMENTS, &amp;c.

## Vote 4.—Post Office Packet Service—continued.

Mr. Seely—continued.

chequer?—I believe at the time when the Estimates were framed in this way, it was arranged by the Treasury that this should be the method adopted.

481. (To Mr. Welby.) What do you say to that?—The method of bringing to account the fines in the case of contract is essentially a part of that scheme which the Financial Secretary to the Treasury will have to lay before the Committee. It was referred to by the Chairman at the beginning of this sitting.

Lord Eslington.

482. (To Mr. Blackwood.) These penalties accrue chiefly under private contracts from a failure to perform a voyage in the given time; is not that so?—Yes.

483. How can you possibly estimate that. The vessels may be unable to run within the time in consequence of storms, and so forth; it must always be a very incorrect estimate that you form, I presume?—It has been estimated on the average of previous years; we have found that that is about the amount that the company rendered themselves liable for, taking one year with another.

484. The estimate is always liable to great errors from that cause, I apprehend?—To a certain extent.

Mr. O'Reilly.

485. I see you are obliged to estimate what we may call the balancing part of it, namely, the extra premiums which may be earned under similar contracts?—Yes.

486. I take it that you estimate there again according to what the average shows you as likely to be earned as extra premiums?—Yes, that is the case.

487. Perhaps it is the fact of having to estimate that amount that has induced you to take an estimate of the average gains by way of penalty. The one part you are obliged to estimate for, that is to say, what you think will be the amount of the premiums earned, and against that you set what you think will be the amount of the penalties?—I think the practice of deducting the penalties from the estimate is the older practice; that of estimating the premiums is a somewhat recent one, and it is only, I think, with reference to one or two contracts that that practice exists.

On Vote 5.

## POST OFFICE TELEGRAPH SERVICE.

Chairman.

488. (To Mr. Ryan.) On paragraph 1, has any answer been received by the Comptroller and Auditor General to a communication addressed to the Post Office requesting information whether the Treasury had acquainted him with their decision respecting the unestablished staff?—Yes; we received a letter from the Treasury on the 19th of February, in which they state that the Treasury have communicated to the Post Office their decision relative to the force of linemen, mechanics, &c., and other unestablished persons, but we do not know what the nature

## REVENUE DEPARTMENTS, &amp;c.

Vote 5.—Post Office Telegraph Service—*contd.**Chairman*—continued.

nature of the Treasury decision is yet; it has not been communicated to us.

489. (To Mr. *Blackwood*.) Will it be communicated to the Comptroller and Auditor General?—The decision has been communicated to the Post Office, and it now remains only for the Postmaster General to govern himself in accordance with that decision, the result of which will be, as we have told the Comptroller and Auditor General, that the only unestablished persons remaining in the employment of the Post Office Telegraph Service are certain classes of men who the Treasury have decided shall be thus employed; they are the labourers, a portion of the mechanics, and so forth.

490. The nature of the proposal will, I presume, be communicated to the Comptroller and Auditor General for his guidance?—Yes, I think so.

491. It is stated in the third paragraph of the Report, that the adjustment with respect to the total expenditure for sites and buildings, from the Post Office to the Telegraph Vote, had not taken place when the account was closed; has it since been made?—No; the Post Office are awaiting the decision of the Office of Works. The Post Office was informed by the Office of Works on the 10th of December that they were awaiting a decision from the Treasury.

492. (To Mr. *Welby*.) Is that decision likely soon to be arrived at?—I understand that this forms part of that question to which I alluded before, as a matter standing to be settled between the authorities of the Treasury and the Postmaster General personally.

493. (To Mr. *Ryan*.) Is the arrangement now proposed by the Postmaster General, with respect to the form of the Estimates as regards salaries and wages charged to "Materials," satisfactory?—Yes, it will come into operation in the year 1878-79.

494. And it will meet the views expressed by the Comptroller and Auditor General?—Yes.

495. (To Mr. *Blackwood*.) It appears that a proposal was made by the Postmaster General with respect to the obtaining of Treasury authority for the employment of certain boy messengers; has that scheme been sanctioned by the Treasury?—To a certain extent it has been sanctioned, but some correspondence is still going on upon the subject, which leaves it still unsettled to a certain extent.

496. Is it likely soon to be settled?—I have been in hopes that it would be settled before this; the last letter from the Treasury was only received this morning.

*Mr. Goldney*.

497. With regard to the large increase under Sub-head C. 6, "Maintenance of Railway Companies," and under C. 8, "Compensation to Railway Companies," can you state what part of that is chargeable to income; is the capital account entirely closed?—Yes, the capital account is entirely closed as regards expenditure of this character.

## REVENUE DEPARTMENTS, &amp;c.

Vote 5.—Post Office Telegraph Service—*contd.**Mr. Goldney*—continued.

498. Is it entirely closed as regards compensations to railway companies?—Not for the purchase of their undertakings; but it is as regards the way leaves, which are provided for here.

499. I am now looking at the amount under C. 8; is that amount for compensation charged to an open capital account, or is it charged to the annual expenditure?—The purchase of undertakings alone is charged to capital account.

500. Is this sum under C. 8 to go to capital account or not?—No; because the main expenditure under this head relates to way leaves and pole rents.

501. That is carried to revenue?—Yes; it is chargeable to income.

502. Under Sub-head C. 6, your note is, that "Settlements with certain railway companies in respect of maintenance were effected during the year, under which large arrears had to be paid"; are those arrangements for railway companies to do the work instead of the department for the future?—The railway companies maintain our lines at fixed rates. In that year considerable arrears had to be paid, which had remained unsettled in consequence of the negotiations not having been completed.

503. Therefore, you think that the sum voted for next year will be sufficient to cover that expense now that the claims are cleared up?—Provision has been made in the Vote for 1877-78 to discharge all expenditure of that kind; that is to say, all arrears due to railway companies on account of maintenance, and I hope that those will be cleared off by the end of the present financial year.

504. If I understand you rightly, there will always be a sum to be paid annually for maintenance?—Yes.

505. But you have not quite cleared off the arrears yet?—That is so.

506. The sum in this year's Vote you think will clear off the remaining arrears, as well as meet the annual expenditure?—Precisely.

*Chairman*.

507. (To Mr. *Ryan*.) It is stated in the 7th paragraph of the Report of the Comptroller and Auditor General that a letter was addressed to the Treasury to ascertain whether the Postmaster General had rightly interpreted their directions with respect to the necessity of Treasury sanction for expenditure incurred in laying down private telegraph wires; has any answer been received to that letter?—Yes, an answer has been received, by which the Treasury give their sanction to past expenditure, and state that the Post Office ought to obtain it for the future by means of quarterly schedules.

*Mr. Seely*.

508. Does this apply to all payments, whether for less than 100 *l.* or for more?—Yes, to all payments.

[Mr. *Blackwood* withdrew.]

Mr. *Welby*, c.s.,  
Mr. *Ryan*, and Mr.  
*Blackwood*.

6 March 1878.

## NAVY APPROPRIATION ACCOUNT.

Mr. HENRY WILLIAM ROUTLEDGE WALKER, called in; and Examined.

*Chairman.*

Mr. Welby, C.B.,  
Mr. Ryan, and  
Mr. Walker.

6 March 1878.

509. (To Mr. Walker.) THE Comptroller and Auditor General questions the date of payment in respect of the salary and disbursements of Mr. Johnson. As I understand it, Mr. Johnson had received advances on imprest in 1874-75, and a provision was made for the repayment of his advances in the Estimates of 1877-78, but the account was passed whilst the Navy Account of 1876-77 remained; is that so?—Yes.

510. Would it not, then, have been more correctly charged in the Account now before us?—Yes, in the Account for 1876-77.

511. But it has been charged in the Account for the year 1877-78?—Yes. At the period of framing the Estimates for 1877-78, we did not think that the Account would be brought forward in sufficient time for us to include it in the year 1876-77; we therefore made provision for it in the year 1877-78. The Audit Office take exception to our having charged it to 1877-78, because the Account was strictly speaking not passed in that year, and provision for the arrear does not appear on the face of the Estimates for 1877-78. The basis on which those Estimates were framed and asked for includes that particular item; and we contend that if we introduce into the Navy Estimates detailed statements of every transaction of an exceptional character included in them they will become needlessly bulky and will be troublesome, as indeed I am afraid they are now sometimes, to Members of Parliament from the multitude of particulars given in them. The facts as to the basis of the Estimates can be seen in our department, and I am prepared to show them to the Comptroller and Auditor General.

512. I understand that the objection of the Comptroller and Auditor General is that the charge was brought to account in the year 1877-78, instead of in the year 1876-77, when the Account for it was finally passed by your department?—Yes; but then we were under the impression that the year would be closed before we could charge it, and therefore we provided for it in the next year's Estimates. We might have put it upon the face of the Estimates, and if we had done so, that, I suppose, would have removed the objection of the Comptroller and Auditor General.

513. In what Account is this payment actually charged?—In the Account for 1877-78.

514. But I understood you to say just now, that it would have been more correctly charged in the Account for 1876-77?—Yes, if we could have foreseen it in sufficient time to omit to provide for it in the Estimates for 1877-78.

515. It was finally passed in sufficient time for you to include it, not in the Estimate for 1876-77, but in the Account for that year?—Yes, in the Account, but not in the Estimate. We had, however, already provided for it in the Estimate for 1877-78.

516. Is it not correct to bring into the account of a year any payments which have been made in the year, whether they were provided for in the Estimates for that year, or not?—As a general principle it is, but I think this is an exceptional case, we having provided for the charge in the Estimates for the following year.

*Chairman—continued.*

517. (To Mr. Welby.) What is the opinion of the Treasury upon this point?—The Treasury agree with the Comptroller and Auditor General, that if possible, a charge should be carried to the Account of the first year which is open; that is to say, it should in this case be charged to 1876-77; but if the Accountant General of the Navy was not in a position to feel certain about it, it is not a very great matter, and it is a case in which it is almost impossible to bring down the definition of each sub-head so closely as to include small cases of this kind, and probably he was right in charging it as he did under the circumstances.

518. As a question of principle, I should like to know what your opinion is; supposing a final payment is made for a service in the year previous to that in which provision is made for it in the Estimates, which year ought it to be charged to?—Certainly, as a matter of principle it ought to be charged to the former year.

519. Even although no provision has been made for it in the Estimates of that year?—Yes, it ought to be charged to the first year of which the Account is open.

*Mr. Seely.*

520. (To Mr. Walker.) The Comptroller and Auditor General complains, in paragraph 2, that sufficient information is not given in the Estimates to enable him to compare the payments with the grants. He states that he found that information in the department, and he thinks that it ought to a great extent to be placed upon the Estimates; what have you to say upon that point?—I do not think it would be possible to introduce into the Estimates all the particulars which are intended for departmental classification of payments, without making the Estimates unnecessarily bulky.

521. It is a question of degree?—Quite so. I admit it, and have carried it out so far as this, that when the Committee have suggested modifications of some heads or sub-heads, we have made them, but there must be a limit, and we think that that limit would be exceeded by carrying out the suggestions of the Comptroller and Auditor General in the present case.

522. (To Mr. Ryan.) Can you point out any case in which you think details ought to have been furnished, and were not furnished in the Estimates?—Not at the moment. The reason why this particular paragraph was inserted, was mainly on this ground: there was a violation of the ordinary principle that a sum should be charged against the first open year. We consequently took exception to the sum being postponed, and were met by the statement that it was provided for in the Estimates of the following year. That was a statement which we were not able to verify; and therefore we called attention to it, together with other cases, as showing the difficulty we have in doing our work of examining into the correct classification of expenditure, if we are met by an objection on the part of the department, that payments are provided for in the Estimates of subsequent years.

523. (To Mr. Welby.) What view does the Treasury take of this matter?—The Treasury would agree with the statement which has been made

## NAVY APPROPRIATION ACCOUNT—continued.

Mr. Seely—continued.

made by the Accountant General that it is almost impossible to give so close a definition in the Estimates as to include in it such small items as that under consideration; but it might be a matter for question whether the Comptroller and Auditor General could not find proof from the manuscript evidence in the department of the manner in which the estimate is built up, and ascertain whether such a sum as this was really included under the estimate, and thereby satisfy himself that such a sum was in the mind of the framer of the estimate when he drew it up.

Chairman.

524. (To Mr. Walker.) With respect to paragraph (C.), which questions the classification adopted by the Admiralty, with respect to the payment of Mr. Macnamara, Sub-head P., is for New Works in Naval Establishments Abroad, and contains provisions for factory buildings at Hong Kong; is not that so?—Yes.

525. Whereas Sub-head T. is for temporary superintendence?—Yes.

526. As I understand your contention, it is that practically Mr. Macnamara was in continuous employment, and was not a temporary superintendent?—Yes, and in accordance with practice of the service he is charged upon the particular Vote for the service upon which he was engaged.

527. If he was continuously employed?—Yes.

528. With respect to the expenditure incurred on Her Majesty's Ship "Conqueror" in preparing it for a training ship for the Marine Society, the Admiralty undertook to apply for Treasury authority; has that authority been given?—They have applied for it, or the letter is on the point of being dispatched.

529. Has it been given?—Not that I know of, because the letter would be sent from the office of the Comptroller of the Navy, not from my department, it being regarded as an executive question.

530. (To Mr. Welby.) Can you state whether that authority has been given?—I was not aware that an application for it had been received; I will make an inquiry upon the subject.

531. (To Mr. Walker.) Does the Admiralty now agree with the view of the Comptroller and Auditor General as to the Vote under which this expenditure ought to be charged?—No, I think not; I think the correspondence which has emanated from the Comptroller of the Navy explains his view of the basis which the Admiralty has agreed to, namely, that where works are done to a ship for purposes which it is rather difficult to define, but I may say with a view to general considerations, they should be charged to Votes 6 and 10. We agree to that in principle, but I am not able to discuss the merits of the individual case beyond that which the correspondence itself conveys.

Mr. Seely.

532. According to paragraph 4 of the Report, Mr. McCulloch has, practically, received 500 l. a-year; if he makes less than that by his percentages it is raised to 500 l. a-year, and if the amount is more than that he is not paid more?—Yes.

533. And the Comptroller and Auditor General.

## NAVY APPROPRIATION ACCOUNT—continued.

Mr. Seely—continued.

neral says, as it is a fact that he gets 500 l. a-year, he has in fact a salary, and that that ought to be charged under the head of "Salaries, Wages, and Allowances," under Vote 3, Sub-head A.; why is not that done?—Because we do not regard it as salary. He would become entitled to a pension if it were a salary, and he is not now. He is nothing more than a broker; he has an agency commission up to a certain amount, but he has no such lien upon us as would give him a right to a pension.

Lord Elington.

534. Have not the Admiralty found that by the employment of a skilful broker in the purchase of coal direct from the owners a very large saving has been effected?—Yes.

Mr. Seely.

535. It is a fact, is it not, that Mr. McCulloch's salary is really 500 l. a-year?—I cannot call it "salary."

536. His payment?—I can simply say that his remuneration is 500 l. a-year; any broker's may be the same.

537. But his remuneration is exactly 500 l. a-year, neither more nor less?—Yes; neither more nor less.

Mr. Goldney.

538. You make it up to that if the per-centage comes to less?—Yes.

539. And if it comes to more he gives you a rebate?—Yes.

Sir Walter Barttelot.

540. Is it a permanent arrangement?—It is permanent as regards the nature of the duty, but not permanent as giving him a lien upon us for a pension.

Sir Charles Mills.

541. His remuneration might have exceeded 500 l. in any year, I suppose; that was only the minimum?—No, that was the understood amount that he was to be allowed.

542. But if he did business to a greater extent, would he not have received more?—No; this was a contract between the Admiralty and Mr. McCulloch, and under that contract we have been able to make purchases of coals in such a way as to effect a considerable saving; upon that point the Director of Naval Contracts can speak much more authoritatively than I can.

Mr. Cubitt.

543. Are you aware whether the commission has ever reached 500 l. a year?—No, I cannot answer that question. I should think, if Mr. McCulloch had been paid on the ordinary mercantile basis, his payment would much have exceeded that sum, judging by the character and magnitude of his purchases.

Chairman.

544. But the whole arrangement is very shortly to be determined?—It is.

545. With respect to paragraph 5 of the Report, is it the custom of the Admiralty to lend moorings to the Customs, free of charge, for the use of quarantine ships, but to charge for all other moorings for ships?—Yes, it was then sometimes the

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*Chairman—continued.*

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the custom, because they are considered to be essential for the conservancy of the ship, and as the ship will probably return to the Navy, it was thought to be only part of the arrangement for the public service to allow that to take place; that was done many years ago.

546. It appears that when moorings are returned, their value is deducted from the claim upon the quarantine department for other materials supplied?—No; it was so in this particular case. The Customs received these moorings many years ago, long before the present precise system obtained; then the Admiralty, in their executive capacity, made them a present of these moorings. Many years afterwards fresh moorings had to be issued to the ship, and a charge was made upon the Customs for that. As to these old moorings, the Customs naturally say, "This was your gift; you had the option to give it to us, and you gave it to us, and we now claim to deduct the value of it from the moorings, which are now to be charged in full to us."

547. Then you consider that the moorings were originally given, and not lent?—Yes.

548. (To Mr. Ryan.) Was it understood that those moorings had been not lent, but given?—No, we understood them to have been lent with the ship, but they were practically given, as the correspondence shows.

549. (To Mr. Walker.) Why has this claim, amounting to about 2,000 *l.*, remained so long unsettled?—There was a great controversy, extending over a long period of time, not only with the Customs, but with the Privy Council and other departments. There have been many changes in our own office, and it is only recently that we have been able to concentrate attention to this subject. I cannot speak in the highest terms now of the arrangement of the clerical staff, inasmuch as the undue proportion of Civil Service writers, and so on, is so great, but in consequence of what has been going on, it is only within the last eighteen months that we have been able to bring the thing to an issue. Now the matter is cleared up, and that, in common with many others, have been satisfactorily dealt with; but I am bound to state that in the progress of the changes in the department matters have, I do not say slipped through altogether, but have not been dealt with quite as promptly as they should have been.

Mr. Seely.

550. It appears to me that you adopt one principle with respect to one case with reference to these moorings, and another principle with respect to another case?—Yes, the law has changed in the meanwhile. If you look into the very old things which took place even before you ransacked the dockyards you will find that to be so.

551. Do you adopt the same principle now in all cases?—At the present time we should deal with it on a different principle altogether; no question of give and take would probably arise.

*Chairman.*

552. With respect to the 20,000 *l.* which has been charged on account of the payment made by Imprest Bill to Messrs. Penn & Sons, have you anything further to add to the statement made in the letter of the 21st of August?—No; we re-

NAVY APPROPRIATION ACCOUNT—*continued.*

*Chairman—continued.*

ceived a communication from the Admiralty under date of 31st March 1877, telling us amongst other payments to pay 20,000 *l.* as advance on account of the final instalment. That came about seven o'clock on the night of the 31st, when I had only a few hours, namely, from seven o'clock until 12 o'clock, before the close of the financial year. This invoice came before me then. The certificate was sufficiently exact to enable me to pay the cash to Messrs. Penn under the direction of the Lords of the Admiralty, and in consonance with the fact that provision was made for this payment in the year 1876-77; but with, perhaps, somewhat excusable timidity, not wishing to meet the criticisms of the Audit Office, I thought the form of expression in the certificate should be more exact. I felt no doubt that the money was due to the Messrs. Penn; the money was provided for the service, and the Lords of the Admiralty told me to pay it. I paid it in the shape of an Imprest Bill. A few days afterwards the local inspector gave me a precise certificate, in the form in which those certificates are ordinarily given, stating that work had been done up to the 27th of March, for which that payment was legitimately due.

553. If you had received that second certificate on the 31st of March, this would have been made a final payment instead of an imprest?—Yes.

554. (To Mr. Welby.) What would be the opinion of the Treasury as to a payment made under those circumstances; can it be regarded as a final payment, and brought to charge in the year before us, or is it to be regarded as an imprest?—I think, on the whole, the Admiralty were justified in considering it as a final payment, they having satisfactory evidence before them that the work had really been performed on the 31st of March, and that therefore the contractors were entitled to be paid.

Colonel Stanley.

555. (To Mr. Walker.) Do I understand you to say that there were two communications received from the inspector?—Yes.

556. Was there any substantial difference between them?—Yes.

557. What was it?—The latter certificate stated what was required, namely, that up to the 31st of March 1877 work had been done to the extent of 20,000 *l.* upon the machinery. Under those circumstances we made the adjustment. This is the first certificate of the inspecting officer, dated the 27th of March. He says that the value of the work done up to that time justified an advance of 20,000 *l.* The certificate says that he "sees no objection to the advance in the case of the 'Northampton.'" It is to be observed that instead of the usual reason, what is stated as the reason is, that "the work done justifies the advance, as considerable progress has been made," and we did not consider that sufficient. We thought it sufficient to make a payment by way of imprest, but not sufficient to make a final payment. I have no hesitation in saying that if I had had the misfortune to make it a final payment upon that certificate, I should have received much more castigation from the Comptroller and Auditor General than I have now.

558. I should

NAVY APPROPRIATION ACCOUNT—*continued.*

Lord *Eslington.*

558. I should like to understand more about these certificates. Are the payments upon the inspector's certificate made under different heads?—Yes.

559. There are sub-divisions in regard to different portions of the ship?—Yes, upon those portions of the ship which form the subject of distinct agreements.

560. You have that additional check in making all payments on receipt of the certificate?—Yes. This is the further certificate, dated the 10th of April, "I certify that the engines, boilers, &c., constructed by Messrs. Penn & Son, for the "Northampton," are being erected on board the ship, and that the value of the work done to the 27th March 1877, was such as to justify an advance of 20,000*l.* being made to the contractor on the final instalment." I submit that without his specific statement I should not have been justified in charging it as a final payment, although I was perfectly satisfied on two points. I had perfect confidence as regards the individuals concerned, and I had the authority of the Board of Admiralty, and there was the fact that the work was done and provided for in 1876-77.

561. (To Mr. *Ryan.*) Have you any further observation to make upon this point?—Only this; the Comptroller and Auditor General's view is that, in dealing with these cases of payment before an article is delivered, it is incumbent upon him to be strictly satisfied by a certificate, which is the only way he can ascertain it, that the work was actually done. At the time this payment was made no such satisfactory certificate was forthcoming. The course adopted in this case of issuing an imprest to a contractor is quite an unusual one. Usually no payment is made to a contractor until the certificate is in the hands of the department, and then it is a final payment. This was an imprest first of all, and it was turned into a final payment afterwards.

562. (To Mr. *Walker.*) Would not that depend upon the terms of the contract in the first instance?—Quite apart from the contract if the claim had been rendered in sufficient time to allow of action being taken, no doubt we should have taken action in the usual way; but I did not get this claim until within a few hours of the termination of the financial year, and surely I was not to throw upon a year in which no provision had been made for it such an amount as 20,000*l.* when the work had actually been done.

Colonel *Stanley.*

563. When was it issued?—On the 31st of March, and on the 16th of April we transferred it. I had only three hours to spare between the time of receiving the claim and the end of the night.

Mr. *Cubitt.*

564. On the 16th of April you received a further certificate?—Yes; and thereupon I made the transfer.

Lord *Eslington.*

565. I presume legally you were bound to pay the money to the contractor, inasmuch as a certificate for the work done was handed in, although it was only three hours before the termination of 0.9.

NAVY APPROPRIATION ACCOUNT—*continued.*

Lord *Eslington*—*continued.*

the financial year?—I simply say this; if I had had no audit at my back, I should have paid it finally; but having an auditor behind me, I did not do it.

Colonel *Stanley.*

566. If I understand it rightly, your view of the transaction is this: you made a payment on the 31st of March upon grounds which you thought justified you in treating it as a payment upon which an imprest might be given?—Yes.

567. And that you were right in fact, although not in form?—I think I was both right in fact and in form as regards what I did on the 31st of March in treating it as an imprest; but I required a further certificate in order to have it converted from an imprest into a final payment.

*Chairman.*

568. Have payments often been made of this nature by way of imprest?—Very seldom, and this was a case of an extreme nature, otherwise I should not have done it; but I had only about three hours to determine whether it was to be thrown out of the year or not.

569. With respect to the expenditure referred to in paragraph 7, on the contrary, the payment appears to have been postponed?—Yes. I should like simply to observe that there are two features in this case which do not exist in the other; first of all this was an arrear for which we were liable, and there never was any Vote taken for it, but it is charged upon the Miscellaneous Vote, the amount of the Vote being based on the average of three years; therefore there is no specific Vote for it. It was due two or three years ago, but from the contractors not having sent in their claim earlier, it only came to be dealt with by me in the evening of the 31st of March. I then found that the item against which this particular amount if charged would come, was considerably in excess, and that the Vote collectively was very considerably in excess. The Treasury had in former cases frequently cautioned and warned us against this Miscellaneous Vote always running more or less into excess, the time was so late that I could not possibly suggest to the Board of Admiralty to write to the Treasury, and propose that this sum should be paid, notwithstanding there being an exceeding upon the item of the Vote, and upon the Vote collectively, and it not being unlikely that there would be an aggregate exceeding upon the Navy Estimates. Under those circumstances, there being no special provision in this particular year, or in any year for it, I thought the case would be met if I deferred the payment of these two sums merely for a few hours, and entered them in the Account of 1877-78, as chargeable against the general provision under Vote No. 14.

570. Do you consider that you have any general discretion to defer payments in order to avoid an excess?—Certainly not. I have continually, in former years, heard your Lordship make the statement that I have no such discretion, and I have always agreed to it, but unless I exercise some discretion in connection with the circumstances attending each case, not only with reference to contracts, but with reference to money payments, we may have a general exceeding upon the Naval Votes when money is spent, irrespective

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Mr. *Ryan*, and  
Mr. *Walker.*

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Mr. Welby, c.s.,  
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NAVY APPROPRIATION ACCOUNT—*continued.*

*Chairman—continued.*

tive of what may be expected upon the aggregate accounts. This year I have a surplus for the first time of about 35,000 *l.*, and I attribute that to the operation of the Minute of the late Mr. Ward Hunt, of January 1876, which Minute I placed before the Committee, and it is now part of the Records of the House of Commons. By that Minute I was invested with a certain discretion which I consider that I have not exceeded in this case.

571. Did that Minute which you have mentioned give you any discretion as to the time of making payments?—No, not as to time; it gave me a power of watching the expenditure as it went on throughout the year.

572. It enables you to have a voice in the preparation of the Estimates?—Not only that, but also to have a voice with regard to the expenditure which I had to watch throughout the year.

573. But it gave you no discretion as to the time of making payments upon claims which became due?—Not as to the time abstractedly. If the word "due" is taken in the sense of met by certain provisions, certainly not; but if it only means due as part of continuous payments, then certainly yes, and that was the case here; there was no distinct payment to be made at all.

*Mr. O'Reilly.*

574. Then to what extent do you think you have a discretion as to transferring the charge of a payment made in one year to the next year?—It would be very difficult rigidly to define that. I merely instance this particular case as a justifiable instance of the use of my discretion; I cannot lay down an absolute rule. I should not be justified in withholding a payment which was absolutely due in a particular year until a later one; but there are a great number of payments which are made successively in the course of years, some of which must, from the nature of things, remain at the end of one year to go into another because there is no defined period for them, otherwise you would involve yourself in an excess; for example, there are an immense number of stores, such as canvas, and so on, which come in. We might then defer payment for some of them until the next year as a portion of the continuous payments for such supplies from year to year, but we should not defer the cost of a ship because that cost is rigidly defined, and whether it comes in course of payment in that year or not we must pay it when it is due.

575. (To Mr. Ryan.) What is the view of the Comptroller and Auditor General upon this subject?—The Comptroller and Auditor General's view is that as soon as a liability has fully matured it should be discharged if possible, and that it should not be left to the discretion of the Departments whether they are to cause an excess or deficiency by deferring the payment of the sum or not. The question is, has the liability fully matured? If so, it should be charged to the year in which it has fully matured.

576. (To Mr. Walker.) Take the case you mention. Suppose you get a larger quantity of canvas or other stores in any year than was expected, and you do not pay for all of it, but transfer some of it until the next year, is not that forcing the hand of the House of Commons with refer-

NAVY APPROPRIATION ACCOUNT—*continued.*

*Mr. O'Reilly—continued.*

ence to what it chooses to vote for the next year?—No, I think not.

577. The House of Commons must vote the money for that payment which you have carried to the next year?—They would not vote money for that particular payment; we shall not pay more for canvas because it is voted. We shall pay continuously in the next year what is voted for canvas.

578. The case I put is this; the House of Commons intended you to spend so much money for canvas, but you have contracted to spend we will say, twice as much, of which amount you spend so much out of money voted by the House of Commons for the current year, and hand over the necessary payment for the remainder to the next year when no money has been voted for it?—That is the fact as to the expenditure; it may or may not be considered wrong, but it is the fact.

*Colonel Stanley.*

579. May I ask you whereabouts in the Minute of January 1876, you find the ground for the doctrine which you laid down just now, that as regards running contracts you have the power to alter the dates of payment?—It was not stated in so many exact words, but the purport of this Minute was as far as practicable to prevent the recurring excesses upon the aggregate of the Navy Estimates. My point here is not as to my exercise of responsibility in saying, yes, or no, to certain payments, but I contend that there being excesses on the Votes, and this being the 31st of March, I could not apply for authority to run into a further excess.

580. We may take it from you generally that there is nothing in that Minute which in any way allows you to alter the time of payment after an account has once been submitted to you?—That is so. All I wished to convey was that the Minute was intended by its framer to give me a supervision; I know that because it was the subject of many personal communications, as I dare say you are quite aware, and one gathers what is the spirit of such a document, not so much by what it recites as by the circumstances in which it was made. The result is that throughout the year, we make up for the First Lord of the Admiralty, every three months a provisional statement of balances and liabilities. We are able to do that through my office being made aware of all the orders and all the liabilities, and by that means a general supervision is exercised. If what I have said has conveyed more than that it has been inaccurate; that is what I meant.

581. Was not the real object of the Minute to enable the financial officers of the Admiralty to be constantly furnished with the information that was requisite for them to check their balances?—Quite so.

582. It arose from very large excesses having occurred?—Yes, it arose from very large excesses occurring constantly year after year.

583. Coming back to this particular case. We must clearly understand that it is admitted to this Committee, that it was a wholly exceptional transaction, and is not strictly borne out by the regulations?—Not if regarded as an exercise on my part of a power to defer payment. This claim was submitted by the director of works on the last day of the month, and Mr. Egerton makes this

NAVY APPROPRIATION ACCOUNT—*continued.*Colonel Stanley—*continued.*

this Minute upon it "approved, but previous authority should have been asked for." I was obliged to say, yes, or no, within about an hour, and this was my Minute: "The Vote being in excess and Treasury sanction not obtained for this further excess, payment cannot be made this year."

Chairman.

584. That Minute would not be in accordance with the view which was expressed by the Public Accounts Committee last year, when they stated, "Your Committee think it right to observe that in their opinion payments properly chargeable to a given year should not be postponed even to avoid the evil of an excess upon the sum granted by Parliament. The irregularity they consider consists in incurring expenditure which has not been authorised by Parliament, and would be increased rather than diminished by not defraying it when it has been actually incurred"?—Yes, I should perfectly agree with that, but I could not ask the Treasury for their sanction to this payment; the Vote on the aggregate was in excess, the particular item was in excess, and there was a very considerable doubt in my mind whether under those circumstances I was justified in making the payment.

585. You could not ask the Treasury for authority to make the payment?—No, because I had no time.

586. The Report of this Committee which I have read, states that it is better to exceed a Vote than to defer payment when the expenditure has been incurred?—Yes, and I perfectly agree with that, if there is a Vote for the year to meet the payment, but there is no Vote for the year for this payment; it is a Vote for the year for the Service based upon an average; if I took advantage of the circumstance you refer to it would not enable me to obtain the sanction of the Treasury.

587. Do you agree with the opinion expressed by the Comptroller and Auditor General in paragraph 9 of his Report, that if the claims of the Admiralty had been made at an earlier date, the expenditure there referred to in connection with the Ashantee Expedition would not have fallen upon the naval funds?—Certainly.

588. (To Mr. Welby.) In their Report of last year the Committee stated that it did not appear to "be held to be the duty either of the Treasury or of the Comptroller and Auditor General to examine the balance sheet and test the balances, but that the system of the Audit of Public Accounts cannot be considered complete until provision is made for that final and important step." Have any steps been taken by the Treasury with regard to such examination of the balance sheet?—No; no steps have been taken by the Treasury, and the action of the Comptroller and Auditor General, detailed in paragraph 17, has not been taken at the request of the Treasury.

589. Has the subject been under the consideration of the Treasury?—Not since the Report of the Committee of last year.

590. (To Mr. Ryan.) Did the examination which is reported here entail much labour or cost?—It did not entail any extra cost, but of course it entailed a certain amount of labour.

O.9.

NAVY APPROPRIATION ACCOUNT—*continued.*Chairman—*continued.*

591. Do you consider that the examination was sufficient to give satisfactory results?—It is rather a matter for the Committee to judge as to whether what we have brought to their notice is important or not; but, at all events, the course taken has enabled us to bring claims of long standing, not only before this Committee, but also to the notice of the Admiralty themselves, and thus to cause them to look up a great many old outstanding claims which had perhaps gone to sleep.

592. Is it sufficient to guard against certain evils of which there have been instances in former years?—I think it would be sufficient to guard against the recurrence of such a state of things as came before this Committee last year with reference to the War Office balances.

Mr. O'Reilly.

593. (To Mr. Welby.) There were two officers appointed in the Treasury, I think, some years ago with the duty of verifying the balances?—Yes.

594. Is their work still in operation?—Yes.

595. Their duty consists in verifying the actual balances?—Yes. Perhaps the honourable Member will allow me to state the duty imposed upon those officers. The officers in question go by the name of the Treasury Officers of Accounts; they are at present Mr. Mills and myself. The duty of verifying the balances as described by the honourable Member, was entrusted to them; but I ought to add that their duty was not extended to any interference with the military and naval services; it was confined to the Civil Services; and the immediate object of imposing that duty upon them was this: a case had occurred in which a defalcation took place, and as these two officers were practically established as consulting officers and as assistants to the accounting officers throughout the service, it was intended that if any head of an office had a doubt as to an officer under him who had the custody of public money, he should come to the Treasury Officers of Accounts, and that they should go at once upon the instant of suspicion, and call upon the officer who had charge of public money, to produce his balance. It was to enable instant action to be taken in case of a suspicion arising. That was the object with which the duty was entrusted to the Treasury Officers of Accounts, and it was confined to Civil Service Votes.

596. I am aware that it was confined to Civil Service Votes, but is it understood that those officers do not verify any balance except when the head of an office applies to them on the ground of suspicion; I rather understood that they were to verify balances here and there, without any suspicion, just as a sort of check?—Previous to the time of that duty being imposed upon them, they had been charged with the duty of going round from time to time to see that the accounts of the different departments were in order, and to confer with the clerks in charge of the accounts, as to any change being necessary in form. No doubt when they examine the accounts, it is their duty to see whether the accounts are properly kept; and if they have any reason for doing so, they can call upon the Accountant to produce any balance which may be in his hands.

F

597. Do

Mr. Welby, C.B.,  
Mr. Ryan, and  
Mr. Walker.

March 1878.



Mr. Welby, C.B.,  
Mr. Ryan, and  
Mr. Walker.

6 March 1878.

NAVY APPROPRIATION ACCOUNT—*continued.*

Lord Eslington.

597. Do you report the result of your examination of the balances in the first instance to the Accountant General, or do you report it without reference to him at once to the Treasury?—I do not think that since the time of the passing of that Minute, which specially gave us the power of verifying the balances, and which was caused by a defalcation on the part of an accountant, we have ever been called upon to act immediately on a case of suspicion. Therefore, so far I think that Minute has not come into action, but under the instructions from the Treasury, whenever we visit a department and confer with the accounting officer, our first duty is to inform the head of the department that we are there; we then look at the accounting officer's books, and confer with him upon any questions which arise. If there is any reason to be dissatisfied with the manner in which the accounts are kept, we report that to the head of the department, and, if necessary, we report it to the Treasury as well. In both cases the head of the department is the person with whom we communicate, and if we saw reason to think that there was irregularity, we should also make a report to the Treasury.

598. Might not the case occur that the accounts were perfectly well kept, but the balance was not there?—Certainly, and we should ask for proof if necessary.

599. Do I rightly understand that when you are looking over the accounts of a department you always verify the balance?—It is only in very few cases that accounting officers hold more than a petty cash balance; in such cases we should not ordinarily call for the production of a few pounds. If an accountant holds larger sums, we should call for his bank pass-book. If we had been inspecting the accounts shortly before a defalcation taking place, where there was or ought to have been a balance in hand, and the question had come before this Committee, I have no doubt the Committee would have asked us, with very good reason, why we had ascertained the existence of the balance.

Chairman.

600. (To Mr. Walker.) Has any decision been arrived at with respect to making the ledger exhibit the whole claims upon individuals?—No, it is unfortunately mixed up with the long-veiled question of Extra Receipts, and I can only answer that it must come to the front as soon as that larger question is entertained and disposed of; but until we have come to some conclusion with regard to the Extra Receipts, I do not want to hamper our office more than at present.

601. It has been ascertained by the Comptroller and Auditor General that a very large number of claims have been outstanding for many years?—Yes.

602. What has been the cause of the delay in settling them?—Endless controversy with various persons as to admitting them; but I am bound to say that now they are proceeding with greater promptitude and rapidity, and we are indebted to the suggestions of the Comptroller and Auditor General with reference to the audit of balances for the improvement which is going to take place.

NAVY APPROPRIATION ACCOUNT—*continued.*

Chairman—*continued.*

603. It appears that some of these claims from the India Office date as far back as the year 1861?—Yes.

Mr. Cubitt.

604. (To Mr. Ryan.) With regard to these claims it is mentioned that some of them have been "cancelled, or otherwise adjusted"; what meaning are we to place upon the words "otherwise adjusted"?—That expression comes to us entirely from the Admiralty. We have not verified these cases; we only take their statement.

605. (To Mr. Walker.) Will you explain that phrase?—We can neither cancel nor adjust one of these claims without the distinct sanction of the Treasury; that refers to claims considered, from length of time or other circumstances, to be hopeless. The Treasury, by their jurisdiction, give us their sanction for withdrawing them, and we show them upon the face of our Appropriation Account as balances irrecoverable.

606. Then "otherwise adjusting" is only another form of cancelling?—Yes, that is all that it is; we do not mean to say that they are thrown away. The sums on this balance sheet are the result of the working of the most intricate and prompt machinery. We have very large balances in the hands of our cashiers at the dockyards; but they undergo supervision by the superintendents and others every month, and all the sums in the hands of our paymasters all over the world are also verified upon the face of the monthly account by a Board of Survey. The result is, that at the end of every year, I believe 300*l.* would more than cover any defalcations that may arise out of the expenditure of 5,000,000*l.*

Chairman.

607. It is stated in the Report of the Comptroller and Auditor General, that the Treasury have intimated to the Lords of the Admiralty their opinion that the time has come for the application of a test audit to the Accounts of Naval Expenditure; are you aware whether the Lords of the Admiralty have signified their concurrence with the view of the Treasury?—They have.

Mr. Seely.

608. When was that consent given?—Within the last five or six weeks, and I think the Admiralty have asked the Treasury whether the Audit Office would find the necessary space for the increased audit.

609. Will you turn to page 48 of the Comptroller and Auditor General's Report, under the head of C., you will see there that there is a deficiency of 23,299*l.* 2*s.* 7*d.*, and it is explained by saying that the deficit is "caused by a sum of 18,416*l.* 8*s.* 11*d.* for coals purchased from the India Government at Bombay in consequence of the Prince of Wales' visit"; was all that sum paid for coals purchased from the India Government at Bombay in consequence of the Prince of Wales' visit?—Yes.

610–12. What was the amount paid for coals?—£. 18,416. 8*s.* 11*d.*

613. On page 48, under the head of D., "Experimental Purposes," it appears that the War Office

NAVY APPROPRIATION ACCOUNT—continued.*Mr. Seely—continued.*

Office agreed to pay half the cost of a target?  
--Yes.

614. But then they made the target themselves, did they not?—Yes.

615. And no claim has yet been made upon the Admiralty for it?—No, none has been made up to the present time, and I suppose they will not make one now.

616. When was that amount due?—In that

NAVY APPROPRIATION ACCOUNT—continued.*Mr. Seely—continued.*

year; they should have made their claim in the year in which we made provision for it, but they did not make it then, nor have they made any since that time.

617. You do not mean to ask them anything more about it?—No, it is a disputed point; the whole position of the thing has changed altogether; this question is a very vexed one.

*Mr. Welby, C.B.,  
Mr. Ryan, and  
Mr. Walker.*

6 March 1878.

**GREENWICH HOSPITAL CAPITAL AND INCOME ACCOUNT, AND  
GREENWICH HOSPITAL AND SCHOOLS ACCOUNT.**

*Chairman.*

618. No question arises on these Accounts?—No.

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# A P P E N D I X.

PAPER handed in by Mr. Welby.

PUBLIC ACCOUNTS COMMITTEE, 1877.

Appendix.

## TREASURY MINUTE.

31 October 1877.

My Lords read the First Report of the Committee of Public Accounts, 1877, upon the Appropriation and other Accounts for the year ended 31st March 1876, audited by the Comptroller and Auditor General.

*Deficits.*—The Committee observe that the deficits upon various Votes for 1875-76, for which Parliament had provided before the settlement of their Report, are in accordance with their views. But my Lords note that, through an error of the press, the deficit on the Vote for Surveys of the United Kingdom is stated by the Committee at 20 *l.* less than its true amount, which is 3,331 *l.* 3 *s.* 3 *d.* Preamble.  
Par. 1.

*Surpluses.*—By their Minute of 23rd March last, my Lords directed that the several surpluses accrued on votes of Parliament for 1875-76 (except that upon Army Grants, dealt with later on in the present Minute) should be surrendered to the Exchequer. 5207/77.

In three instances, viz., those of the surpluses on the Votes for Public Education, England and Wales—for Paris International Maritime Exhibition—and for Post Office, the sum surrendered differs from the surplus mentioned as due to the Exchequer in the Report of the Committee.

In the case of the Education Vote, the Committee state that the surplus is 15,954 *l.* 4 *s.* 1 *d.*, being 1 *l.* 1 *s.* more than has been surrendered. The difference, however, arises from a refund of 1 *l.* 1 *s.* having been inadvertently added in the Report to the correct surplus shown by the Comptroller and Auditor General, instead of to the surplus shown by the Accountant. Par. 40.

With respect to the Paris International Maritime Exhibition, the Committee recommend the disallowance of certain items, and report the surplus to be surrendered as, in consequence, 162 *l.* 3 *s.* 8 *d.* The only sum, however, which my Lords have as yet been able to surrender is 27 *l.* 3 *s.* 8 *d.*, which was in the hands of the Paymaster General. The balance of 135 *l.*, imprested to the English Secretary to the Exhibition, has still to be accounted for by the accounting officer to this Board.

In the case of the Post Office Vote, the surplus stated by the Committee is 17,998 *l.* 11 *s.* 0½ *d.*, or 19 *s.* 11½ *d.* less than the sum of 17,999 *l.* 11 *s.* (disregarding fractions of 1 *d.*) actually surrendered; but this is due to a disallowance of 10 *s.* having been deducted, in the Report, from the surplus shown by the Accountant, instead of being added thereto. Par. 66.

My Lords proceed to give directions regarding such of the matters touched upon in the Report as can now be disposed of.

### I.—APPROPRIATION ACCOUNTS OF VOTES FOR CIVIL SERVICES. Paragraphs 1 to 50 of the Report.

Write to the First Commissioner of Works :

Sir,

I AM desired by the Lords Commissioners of Her Majesty's Treasury to transmit to you herewith, for your information, a copy of paragraphs 1 and 2 of the Report of the Public Accounts Committee for 1877, relative to the Appropriation Account of the Vote for Surveys of the United Kingdom, 1875-76, and of paragraph 8, respecting the defalcation of the Clerk of the Works at Constantinople.

The deficit on the Account of the Survey Vote ought to have been stated as 3,331 *l.* 3 *s.* 3 *d.* in paragraph 1.

My Lords are in communication with the Judges of the Landed Estates Court, Ireland, with a view to a speedier recovery of the cost of maps supplied by the Survey Department.

I am, &c.

## Appendix.

Write to the Judges of the Landed Estates Court, Ireland :

My Lords,

Page 94 of Appendix.

I AM directed by the Lords Commissioners of Her Majesty's Treasury to transmit to you, for your information, a copy of paragraph 2 of the Report of the Public Accounts Committee for 1877, and of a Memorandum by the Treasury Remembrancer in Ireland, respecting the large arrears constantly due from the Landed Estates Court for maps supplied by the Survey Department.

My Lords request that you will be so good as to consider the arrangement suggested by Mr. Murray for making solicitors pay for the maps as soon as they have been executed, instead of waiting until the estate has passed through the Court, and that you will let them know whether you think it feasible.

My Lords agree with the Committee, that either the arrears should be obviated or the price of the maps raised.

I am, &c.

Write to the Secretary, Board of Trade :

Sir,

THE Lords Commissioner of Her Majesty's Treasury desire me to request you to submit to the Lords of the Committee of Privy Council for Trade the enclosed copy of paragraphs 3 to 7, 13, 14, and 49, of the Report of the Public Accounts Committee for 1877, respecting the Appropriation Accounts of Votes administered by your Department.

The Board of Trade will observe from paragraphs 4 to 7, respecting the Account for Lighthouses Abroad, that the Committee agree with my Lords as to the propriety of recording in the Appropriation Account of a Vote for a given service, all payments made in respect of that service within the year, whether in excess of the Vote or not, and whether or not it be requisite to open a new sub-head for any payments that are so in excess.

The observance of this rule in no way implies that my Lords sanction any payment in excess of the Vote, an act which is beyond their power; but it insures that such an irregularity, whenever it occurs, is brought fully and promptly to the knowledge of Parliament, for allowance or disallowance, as Parliament may see fit.

In paragraph 13, the Committee refer to the fact that Treasury sanction has been given to the salaries of officers appointed under the Merchant Shipping Act, 1875. Such is no doubt the fact; nevertheless, my Lords cannot miss the opportunity of calling the special attention of the Board of Trade to the scale on which the Survey Establishment has been constituted. My Lords have reason to know that, in the judgment of experienced persons, the salaries of such members of the Establishment as are drawn from the superior ranks of the seafaring class are pitched at a higher point than would suffice to command the services required, when the advantage of service on shore is considered. The numbers also were necessarily fixed without experience, upon estimate and conjecture only.

My Lords would suggest that Returns should be called for showing the extent to which the staff has, at each port, been actually employed.

So far as its action has been preventive only, this kind of police duty requires neither large numbers nor any considerable proportion of highly paid officers.

My Lords consider it matter of absolute necessity to watch and control this formidable addition to the public expenditure.

6913/77.

The question of apportioning expenditure between the Mercantile Marine Fund and the Board of Trade Vote, also referred to in paragraph 13, has been settled by the letter from this Department of 5th June 1877.

Par. 14.

7698/77.

As regards persons employed upon the Survey Establishment who are still without a Civil Service certificate, my Lords would observe that, although all question of the title of such persons to pension has been met by the Superannuation (Mercantile Marine Fund Officers) Act, 1877, it will still be necessary for them to obtain certificates in order to satisfy the Comptroller and Auditor General as to the admissibility of payments for their salaries. The Civil Service Commissioners will judge whether this is a case in which they may properly dispense with examination, and grant certificates under Clause VII. of the Order in Council of 4th June 1870. My Lords suggest that the Board of Trade should communicate with the Commissioners upon the subject. But it must be understood that the grant of the certificate will not confer a title to pension on any person not entitled to pension from the Mercantile Marine Fund.

Par. 14.

With respect to the payments to Procurators Fiscal, my Lords would be glad to receive a copy of the opinion of the Lord Advocate as soon as it has been obtained by your Department. No communications on the subject seem to have passed between the Lord Advocate and the Treasury.

I am, &c.

Write to the Clerk of the Parliaments :

Sir,

THE Lords Commissioners desire me to transmit, for your information, the enclosed copy of paragraph 9 of the Report of the Public Accounts Committee for 1877, relative to the Appropriation Account of the House of Lords Offices Vote, 1875-76.

You

You will observe that the Committee refer to a former recommendation made by them that notes of extra remuneration or of pensions received by officers of the House should appear in future Estimates and Accounts.

A further circular on this subject, laying down general rules for the guidance of Departments, will shortly be issued.

I am, &c.

Write to the Paymaster General :

Sir,

I AM directed by the Lords Commissioners of Her Majesty's Treasury to enclose, for your information, a copy of the 17th paragraph of the Report of the Public Accounts Committee for 1877, relative to the Appropriation Account of the Vote for your department, 1875-76.

My Lords would be glad to know whether the messenger referred to is still employed and has obtained a certificate.

I am, &c.

Write to the Commissioners of Public Works, Ireland :

Gentlemen,

I AM desired by the Lords Commissioners of Her Majesty's Treasury to transmit, for your information, the enclosed copy of the 20th paragraph of the Report of the Public Accounts Committee for 1877, relative to the Appropriation Account of the Vote for your Department, 1875-76.

The amended staff of messengers mentioned by the Committee has now been sanctioned by this Board. 7667/77.

I am, &c.

Write to the Commissioner of Valuation, Dublin :

Sir,

IN transmitting to you the enclosed copy of paragraph 21 of the Report of the Public Accounts Committee for 1877, relative to the Appropriation Account of the Vote for General Survey and Valuation of Ireland, 1875-76, I am directed by the Lords Commissioners of Her Majesty's Treasury to state that they think it of importance that the miscellaneous receipts of a department should be promptly collected and regularly paid over to the Exchequer.

My Lords are about to issue a circular laying down rules for the guidance of departments in regard to these receipts.

I am, &c.

Write to the Assistant Paymaster General for Chancery Business :

Sir,

I AM directed by the Lords Commissioners of Her Majesty's Treasury to transmit, for your information, the enclosed copy of the 22nd paragraph of the Report of the Public Accounts Committee for 1877, relative to the Appropriation Account of the Vote for the Court of Chancery, England, 1875-76, and to state that, as a matter of principle, all charges properly belonging to a financial year should, so far as practicable, be brought into course of payment within it.

I am, &c.

Write to the Superintendent of the County Court Department :

Sir,

I AM directed by the Lords Commissioners of Her Majesty's Treasury to transmit, for your information, the enclosed copy of the 23rd paragraph of the Report of the Public Accounts Committee, 1877, relative to the Appropriation Account of the County Court Vote, 1875-76.

I am, &c.

Write to the President of the Probate, &c., Division of the High Court of Justice :

My Lord,

I AM directed by the Lords Commissioners of Her Majesty's Treasury to transmit, for your Lordship's information, the enclosed copy of the 25th paragraph of the Report of the Public Accounts Committee for 1877, relative to the Appropriation Account of the Probate and Divorce Courts Vote, 1875-76.

I am, &c.

## Appendix.

Write to the Under Secretary, Home Office :

Sir,

THE Lords Commissioners of Her Majesty's Treasury desire me to transmit to you herewith, for the information of Mr. Secretary Cross, a copy of paragraphs 28 to 32 of the Report of the Public Accounts Committee for 1877, relative to the Appropriation Accounts of Votes for 1875-76, administered by the Home Office directly, or through the Directors of Convict Prisons.

With respect to the remark of the Committee in paragraph 29, regarding the Metropolitan Police Estimate, a letter will shortly be addressed to you, which my Lords hope will lead to a complete accord with reference to the Metropolitan Police Estimate for 1878-79.

See Draft on  
7215/77.

I am to request that paragraphs 30 to 32 may be communicated to the Chairman of Directors of Convict Prisons. My Lords understand the Committee to approve, in principle, of the present method of dealing with the Fine Fund. They do not recommend that the fines should be paid into the Exchequer, as suggested by the Comptroller and Auditor General, nor that the Vote for the purposes of the Fine Fund should be discontinued; but they apparently propose that, instead of deducting the fines from the Sub-head for Pay, &c., or any other particular Sub-head, they should be deducted from the total of the Vote.

My Lords have given their best consideration to this proposal.

According to the present system, the sum voted under the Sub-head "Fine Fund" is deducted from the Sub-head "Pay and Allowances," upon which Sub-head it is a real saving, because each fine imposed diminishes, *pro tanto*, the amount of pay given to the officer fined.

The Pay and Allowances are shown in the Estimate in gross, although the probable amount of fines is deducted from the total at the foot of the detailed list. It is true that the Pay and Allowances are not voted in gross, but neither would they be voted in gross according to the proposal of the Committee, because the fines would still be deducted from the total Vote, of which the Pay and Allowances form part.

The consequence of deducting the fines from the total Vote instead of from a particular Sub-head, would be to weaken the restrictive effect of the deduction without any gain in other respects.

The supposed analogy of the manner in which fines for drunkenness are dealt with in the Army Estimates seems to have misled the Committee.

The Fine Fund in the Army is a real fund; the delinquent soldier's full pay is charged to Vote 1, but so much of it as represents his fine is paid over to the Fine Fund instead of to himself.

Sub-head E. in Army Estimate 17, providing for Gratuities, does not in fact represent a direct charge on the Exchequer. The actual expenditure under that Sub-head is met by transfers from the Fine Fund. The Sub-head operates only to put a maximum on this expenditure. The process will be exactly seen by comparing Army Estimate 17 with the Army Appropriation Account of Vote 17.

But in the Convict Service the delinquent officer's full pay is not drawn; his fine exists only as a stoppage; his pay is drawn minus his fine; no Fine Fund whatever is maintained.

Under the circumstances, my Lords are not disposed to alter the present form of the Convict Estimate until the Committee have had an opportunity of re-considering their recommendation; but they wish that a foot note should be appended to Sub-head S., "Fine Fund," explaining its nature, and stating that the amount has been deducted from Sub-head D., "Pay and Allowances." They also wish that the actual amount stopped in fines, during the year, should be shown by a note in the Annual Appropriation Accounts.

I am, &c.

Write to the Judge of the Court of Probate, Ireland :

My Lord,

I AM directed by the Lords Commissioners of Her Majesty's Treasury to transmit herewith, for your Lordship's information, a copy of paragraph 36 of the Report of the Public Accounts Committee for 1877, relative to the Appropriation Account of the Court of Probate, Ireland, Vote 1875-76.

I am, &c.

Write to the Inspector General of Irish Constabulary :

Sir,

WITH reference to the 37th paragraph of the Report of the Public Accounts Committee for 1877, a copy of which is enclosed herewith for your information, I am directed by the Lords Commissioners of Her Majesty's Treasury to request that the cost of plain clothes furnished to constables employed under the Contagious Diseases Act, 1866, may be reclaimed from the War Office, like other expenses incurred under that Act.

I am, &c.

Write

Write to the Vice-President of the Committee of Council on Education :

Appendix.

My Lord,

THE Lords Commissioners of Her Majesty's Treasury desire me transmit to your Lordship, for the information of the Lords of the Committee of Council on Education, the enclosed copy of paragraphs 38 to 42 of the Report of the Public Accounts Committee for 1877, relative to the Appropriation Accounts of the Votes for Public Education, England and Wales, and Science and Art Department, 1875-76.

My Lords are happy to record that the arrangements for a local examination of the Education Vote Accounts, which the Committee recommend, are now in operation.

By a mistake, which explains itself, the surplus on the Education Vote is stated in paragraph 40 at 1*l.* 1*s.* more than the true amount, which is 15,953*l.* 3*s.* 1*d.*

A further circular will shortly be addressed to all departments respecting notes of extra remuneration, &c., in the Estimates and Appropriation Accounts, such as are referred to in paragraph 41.

The Committee recommend in the succeeding paragraph that "a new and separate Sub-Head" should be opened for expenditure upon a service like the Exhibition of Scientific Apparatus at South Kensington not provided for by a Vote. The object of their recommendation is to show the expenditure distinctly on the face of the account. But my Lords venture to think that this object can be attained with less difficulty by appending to the Appropriation Account a statement of the expenditure for the service in question, as brought to charge under the normal Sub-Heads of the grant.

If the present practice were to provide specific sums under distinct Sub-Heads for each temporary exhibition foreseen at the time of preparing the Science and Art Department Estimate, my Lords would agree that expenditure upon an unforeseen exhibition ought to be charged to a new Sub-Head. But such is not the practice. Sums are provided for general services, such as preparation of catalogues, carriage of objects, police, furniture, wages, and travelling, which sums are applicable to a variety of purposes as occasion may arise. To select portions of the expenditure upon these general services and charge them *en bloc* to a new Sub-Head introduced to cover some particular exhibition would be an attempt to combine two irreconcilable principles of classification. The error into which the Science and Art Department fell, in the case of the Exhibition, of Scientific Apparatus, was not the omitting all provision for it from the Estimate, but the omitting to provide for it sufficiently, and yet more the omitting to obtain Treasury sanction before the excess expenditure was incurred. A recurrence of such irregularities will, my Lords trust, be prevented by the Minute of their Lordships of the Committee, dated 18th December 1876.

(See Minute in Appendix, p. 56).  
20,889/76.

But whenever a special service not distinctly contemplated in the Estimate has occasioned expenditure considerably exceeding the normal grants under a variety of Sub-Heads, my Lords think that a statement of the expenditure for such special service within the year ought invariably to be appended to the Appropriation Account; this would bring the irregularity distinctly under notice, and would, in their opinion, meet the views of the Committee.

I am to request that such a statement of the expenditure on the Scientific Apparatus Exhibition, divided according to the Sub-Heads under which it has been brought to charge, may be appended to the Appropriation Account of the Science and Art Department Vote for 1876-77.

I am, &c.

Write to the Trustees of the British Museum:

My Lords and Gentlemen,

I AM directed by the Lords Commissioners of Her Majesty's Treasury to transmit, for your information, the enclosed copy of the 43rd paragraph of the Report of the Public Accounts Committee for 1877, relative to the Appropriation Account of the British Museum Vote, 1875-76.

I am, &c.

Write to the Commissioners of National Education, Ireland:

My Lords and Gentlemen,

THE Lords Commissioners of Her Majesty's Treasury desire me to enclose, for your information, a copy of the 45th paragraph of the Report of the Public Accounts Committee for 1877, relative to the Appropriation Account of the Vote for National Education, Ireland, 1875-76.

The Committee, adopting the phrase of the Comptroller and Auditor General, observe that the accounting officer would have acted "more correctly" if he had stated the grant in the Appropriation Account under the several Sub-Heads as they appear in the Estimates.

My Lords must state their own opinion more strongly. They consider it to be wholly incorrect and irregular for an accounting officer to alter the sums shown under the Sub-Heads in the Estimate.

The letter from this Department to your Board of 16th October 1876, was based upon an erroneous account, which converted five deficits into fictitious surpluses, and equivalently diminished one surplus that was real. 15,972/76.

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Appendix.

My Lords request that that letter may be at once returned to them, with a corrected account and explanatory schedule, in order that a valid authority covering all the actual excesses may be substituted for it.

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Write to the Secretary to the Queen's University, Ireland :

Sir,

I AM desired by the Lords Commissioners of Her Majesty's Treasury, to transmit, for your information, the enclosed copy of paragraph 46 of the Report of the Public Accounts Committee for 1877, relative to the Appropriation Account for the Vote for the Queen's University, 1875-76.

I am, &c.

Write to Edmund Johnson, Esq., 3, Castle-street, Holborn, Honorary Secretary to the English Committee of the late Paris International Maritime Exhibition :

Sir,

I AM desired by the Lords Commissioners of Her Majesty's Treasury to transmit to you the enclosed copy of the 50th paragraph of the Report of the Public Accounts Committee for 1877, relating to the Appropriation Account of the Vote for the Paris International Maritime Exhibition, 1875-76.

You will observe that the Committee recommend that the payments amounting to 135 £., for which vouchers are still wanting, should be disallowed.

In your letter of 1st February last, and your evidence before the Committee, you held out some hope that you might obtain vouchers from Mr. Meinhard. I am to inquire whether you have obtained them, or have now any prospect of doing so.

My Lords must point out to you that the decision of the Committee, as it stands, has the effect of placing you under the immediate obligation of either producing satisfactory evidence of the expenditure of the sum disallowed, or repaying it to this Board.

I am, &c.

## II.—INCORRECT ESTIMATE OF EXTRA RECEIPTS.

My Lords read the 51st paragraph of the Report of the Committee of Public Accounts for 1877, which is in the following terms:—

"Your Committee have asked for and have received explanations in certain cases in which there has been a material difference between the estimated amount of Extra Receipts and the amount paid over to the Exchequer. Your Committee consider it desirable that the explanation of the causes of any such variation, which must from the nature of these receipts occasionally occur, should be provided in the Account."

My Lords have for some time been of opinion that the Public Departments required to be reminded that these receipts are annually becoming a more important branch of Revenue, and that the Estimates of them must, therefore, be made with greater care.

The last two Estimate Circulars contained some precise instructions upon the subject, but they seem to have escaped the notice of many departments.

My Lords desire to impress upon each Accounting Department the duty of—

1. Carefully estimating the amount of Extra Receipts, and fully informing this Board, at the time the Departmental Estimate is sent in, not only of the aggregate amount of such receipts, but of their nature, and of the amount of each chief class; specifying also the amount and kinds that will be collected in stamps.

2. Paying to the Exchequer, as early as possible in each month or quarter, as may be settled with the Treasury, the full amount of Cash Extra Receipts realised in the last preceding month or quarter.

3. Collecting and, so far as the prescribed periods of payment will permit, paying into the Exchequer, within the financial year, all the Cash Extra Receipts that properly belong to the year.

4. Distinctly explaining, in the notes to the Appropriation Account, any difference that may appear between the Estimate of Cash Extra Receipts and the actual result.

In order that my Lords may have prompt and detailed information of these receipts, they request that every Accounting Department will forward to them, upon the day upon which directions for the transfer are given, a statement of particulars (on a form which will be supplied by the Treasury) of the miscellaneous receipts directed on that day to be transferred to the Exchequer.

A copy of this statement should be forwarded, at the same time, to the Comptroller and Auditor General.

If this regulation be observed, it will no longer be necessary to furnish the Paymaster General, as heretofore, with details of the sums which he is directed to transfer to the Exchequer.

My Lords further desire that each Department accounting for Civil Service Votes, should transmit to this Board, so soon as the Appropriation Account of each year is completed, a copy of the balance sheet showing the balances in respect of Voted and other moneys accounted for by such Department.

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My Lords desire that a copy of this part of their Minute may be communicated to each Accounting Department, including the War Office and Admiralty, with the following circular:—

Sir (or, as the case may be),

I AM directed by the Lords Commissioners of Her Majesty's Treasury to transmit to you the enclosed copy of that part of a Minute by this Board on the Report of the Public Accounts Committee for 1877, which relates to the subject of estimating and accounting for miscellaneous receipts; and I am to request you (to move . . . . .) to cause the regulations therein laid down to be carefully observed in your department.

I am, &c.

### III.—DEFICITS.

My Lords note that, in paragraph 52 of their Report, the Committee of Public Accounts recommend that future excesses on Votes of Parliament should be reported upon by the Committee before they are voted, in order that attention may be called to any excess involving a question of principle, and that such excess may, if desirable, be put by itself in Committee of Supply.

My Lords fully concur in this recommendation. It of course will rest, in the main, with the Committee itself to carry it into effect. This year, however, the delivery of the Appropriation Accounts for Civil Services and Revenue Departments did not take place until the 22nd of February, or nine days after they were ordered to be printed.

Unless the accounts are delivered earlier, it is scarcely possible for the Committee to report upon excesses in time to allow of their being voted, reported, provided for by a Ways and Means Act, placed at the disposal of the Treasury by Royal Order, issued from the Exchequer, and paid to the administering departments, before the 31st March.

My Lords are sure that the Comptroller and Auditor General will concur with them in endeavouring to secure the delivery of the Appropriation Accounts within seven days, at latest, of the meeting of Parliament, as prescribed by Statute.

### IV.—APPROPRIATION ACCOUNTS OF THE REVENUE DEPARTMENTS AND TELEGRAPH CAPITAL ACCOUNT (PARAGRAPHS 53 TO 83.)

Write to the Commissioners of Customs:

Gentlemen,

THE Lords Commissioners of Her Majesty's Treasury desire me to transmit to you, for your information, the enclosed copies of paragraphs 53 and 54 of the Report of the Public Accounts Committee for 1877, relative to the Appropriation Account of the Customs Vote, 1875-76.

I am to state, with reference to the allusion made in the second of these paragraphs to a scheme for dealing with inter-departmental payments and extra receipts which has been under consideration in this department, that my Lords were unable to mature the scheme sufficiently for its submission to the Committee of Public Accounts this year.

I am, &c.

Write to the Commissioners of Inland Revenue:

Gentlemen,

I AM directed by the Lords Commissioners of Her Majesty's Treasury to transmit, for your information, the enclosed copy of paragraphs 55 and 56 of the Report of the Public Accounts Committee for 1877, relative to the Appropriation Account of the Inland Revenue Vote, 1875-76.

My Lords would be glad to know whether the messenger mentioned in paragraph 56 has yet obtained a certificate from the Civil Service Commissioners.

I am, &c.

Write to the Postmaster General:

My Lord,

THE Lords Commissioners of Her Majesty's Treasury desire me to enclose, for your Lordship's information, a copy of paragraphs 57 to 83 of the Report of the Public Accounts Committee for 1877, relative to the Appropriation Accounts of the Votes administered by your Lordship, and to the Telegraph Capital Account.

As regards those paragraphs which relate to the Post Office Vote Account, my Lords

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## Appendix.

have only to remark that they hope to be able, during the recess, to deal with the questions of—

- Par. 58. (a.) A test examination, for Treasury authority, of the accounts of the London district and provincial postmasters.
- Par. 59. (b.) The mode of remunerating sub-postmasters and receivers.
- Par. 65. (c.) The mode of meeting the excess of expenditure over receipts in connection with the grant of Government annuities of very small amount.

With regard to the second of these questions, however, they may remark that it is in course of gradual settlement, in accordance with the views of the Comptroller and Auditor General, as cases of individual remuneration arise for consideration.

The marked tendency of late years has been to substitute fixed salaries for poundage, as the following figures from the Post Office Estimates show :—

	1874-75.	1875-76.	1876-77.	1877-78.
ENGLAND AND WALES.	£.	£.	£.	£.
Salaries of provincial officers - - -	691,419	742,479	780,254	814,000
Poundage of - ditto - - -	22,010	21,257	19,609	16,924
SCOTLAND.				
Salaries of provincial officers - - -	108,926	115,364	117,229	120,573
Poundage of - ditto - - -	3,327	3,810	3,981	3,667
IRELAND.				
Salaries of provincial officers - - -	69,889	72,741	73,798	75,773
Poundage of - ditto - - -	2,819	2,667	2,742	2,239

These figures prove that salaries have increased, during the four years, in England and Wales by 17 per cent., in Scotland by 10 per cent., and in Ireland by 8 per cent. At the same time, poundage has fallen by 23 per cent. in England and Wales, and by 20 per cent. in Ireland; and although, taking the whole period into account, it has risen in Scotland by 10 per cent., a considerable decrease is shown, even in that country, during the last year.

The new classification of appointments prepared with reference to the necessity or otherwise of obtaining a fresh Civil Service Certificate in cases of transfer, which is spoken of in paragraph 61, has been submitted to this Board, and been dealt with in my Lords' letter of the 30th October.

They have not forgotten that a Treasury officer must shortly be appointed to inquire, in conjunction with the Financial Secretary to the Post Office, into rates of Extra Pay and Allowances.

Through a mistaken calculation, the surplus to be surrendered is stated in paragraph 66 as 17,998*l.* 11*s.* 0½*d.*, instead of the right amount, 17,999*l.* 11*s.*

With respect to the Post Office Packet Service Account (paragraphs 67 and 68), my Lords would be glad to know whether the Indian Government has yet paid the balance due for 1874-75, and whether the account for 1875-76 with India has been settled. They hope arrangements may be made for an earlier annual settlement in future.

My Lords are not aware of the present stage of the dispute with the Royal Mail Steam Packet Company.

No remark seems to be required on paragraphs 69-74, relating to the Post Office Telegraph Vote Account, beyond that the question of the Unestablished Staff, referred to in the first of them, is still a subject of consideration.

Adverting to paragraphs 75 to 83, with respect to the Telegraph Capital Account, I am to state that my Lords are still in expectation of receiving from your Lordship the agreements with the Greenock and Ayrshire and East of Fife Railway Companies.

Your Lordship will observe that the Committee concur in the views expressed in the Treasury Minute of 13th March 1877, respecting the disallowances on the Telegraph Capital Account for 1874-75, amounting to 2,236*l.* 10*s.* 3*d.*

My Lords will submit a Vote for the amount to the House of Commons early in next Session.

The Committee also agree with this department and the Post Office in considering that the sum of 6,713*l.* 12*s.* 6*d.*, paid to the Universal Private Telegraph Company for extensions, may be charged to the Capital Account for 1876-77.

In paragraph 83 the Committee express a positive opinion that interest on the purchase money of undertakings should not be charged to Capital Account. My Lords do not understand them to go so far as to wish that a Vote should now be taken for the interest paid prior to 1st April 1876, to the amount of 19,978*l.* 6*s.* 6*d.* It will probably meet their views if a note of this previous charge to capital appears in the accounts from year to

See 14,580/77.  
See 775/77, and  
7896/77.  
Par. 62.

Par. 82.

to year, while interest paid subsequently, whenever specified by the arbitrator, is charged to the Telegraph Vote Account; and my Lords desire therefore that this course may be followed, as from 1st April 1876.

A new Sub-Head, called "Interest on Purchase Money of Undertakings," should be opened for the purpose in the Vote Accounts for 1876-77 and 1877-78, and should be inserted in the Telegraph Estimates for future years, until the charge expires.

My Lords note that the Act 40 & 41 Vict. c. 30, sect. 2, gives statutory effect to the view taken by the Committee, so far as regards money raised under its provisions.

I am, &c.

#### V.—CIVIL CONTINGENCIES FUND ACCOUNT.

My Lords regret that it was not found possible to obtain legislation, during the past Session, for the purpose mentioned by the Committee in paragraph 84 of their Report, viz., recovery from Counties and Boroughs in Ireland of expenses connected with Weights and Measures. They hope that provision may be made for this object in a Bill relating to the Irish Constabulary to be introduced next year.

#### VI.—CONSOLIDATED FUND ACCOUNT.

In paragraph 85 of their Report, the Committee refer to the prospective adjustment of outstanding balances of Advances for Public Works, &c. in Ireland.

The Act 40 & 41 Vict. c. 27, just passed, has provided for this adjustment.

#### VII.—NAVY APPROPRIATION ACCOUNT.

Write to the Secretary to the Admiralty:

Sir,

I am directed by the Lords Commissioners of Her Majesty's Treasury to transmit herewith, for the information of the Lords Commissioners of the Admiralty, a copy of paragraphs 87 to 92 of the Report of the Public Accounts Committee for 1877, relating to the Navy Appropriation Account, 1875-76.

My Lords desire to call the special attention of the Lords of the Admiralty to the latter part of paragraph 87 of the Report, wherein the Committee refer to the statement made to them, that the condition on which the Treasury allowed the amount of 414*l.* 3*s.* 7*d.* to be written off as irrecoverable would be complied with by the Admiralty.

With regard to paragraph 89, my Lords concur in the remarks of the Committee, and have caused a communication to be made to the War Office in accordance with them.

My Lords understand the purport of paragraph 91 to be, that excessive or inadequate estimates should not be disguised by anticipating or postponing payments which, but for that object, would, in the regular course of business, be made at some certain date. What liabilities should be incurred must always remain matter of ministerial responsibility; and this, of course, is not touched by the paragraph.

My Lords hope that the improved financial arrangements recently introduced by the Board of Admiralty will prevent the recurrence of the deficits on Navy Votes which have been so frequent of late years.

I am, &c.

#### VIII.—ARMY APPROPRIATION ACCOUNT; EXTENDED AUDIT OF ARMY ACCOUNTS; AND CHARGES DEFRAIDED BY THE WAR OFFICE ON BEHALF OF INDIA.

My Lords direct that the net surplus of 170,245*l.* 1*s.* 9*d.*, shown upon the Army Appropriation Account for 1875-76, be written off from the balance remaining of Army Votes for 1876-77.

Write to the Financial Secretary, War Office:

Sir,

I am directed by the Lords Commissioners of Her Majesty's Treasury to request that you will communicate to Mr. Secretary Hardy the enclosed copy of paragraphs 93 to 131 of the Report of the Public Accounts Committee for 1877, relating to—

- (a.) The Army Appropriation Account, 1875-76;
- (b.) The extended Audit of the Army Accounts;
- (c.) The charges defrayed by the War Office on behalf of India.

(1.) With regard to the Army Appropriation Account, I am to acquaint you that my Lords have directed the net surplus of 170,245*l.* 1*s.* 9*d.* to be written off from the balance remaining of Army Votes for 1876-77.

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## Appendix.

Par. 98.

Par. 94.

My Lords join with the Committee in hoping that arrangements may be made for lessening the delay in rendering the Indian Accounts, and for distributing the record of expenditure in the War Office books more evenly throughout the year.

(2.) As regards the extended audit of Army Accounts, I am to request that the attention of the Secretary of State may be drawn to the recommendation made by the Committee in paragraph 98, that the consolidation of the Royal Warrants, regulating pay and allowances, should be completed as soon as possible, and that all standing authorities for expenditure should be codified. Their Lordships would have thought that such a work, had it not been allowed to fall into arrear, after the codification of 1870, might have been maintained without any extra expense. They are prepared, however, to sanction such outlay as may be shown to be necessary for the purpose, upon an estimate of it being submitted to them.

Par. 99, 100.

The Secretary of State will observe the Committee consider that it is the duty of the Comptroller and Auditor General to examine the Queen's Warrants and Regulations in order to make sure that expenditure is in accordance with them, and that, although it would be no part of his duty to express any opinion, as my Lords understand, upon the general policy of a Royal Warrant, it is open to him, in his Report upon the Army Appropriation Account, to call the attention of Parliament to any points where there may appear to him to have been a divergence from the terms of a Statute or Warrant, or where Treasury sanction may have been necessary for the charge. My Lords concur in this view of the Comptroller and Auditor General's duties, and they also think that no payment should be made at variance with a Royal Warrant, except in circumstances where immediate action is necessary, steps being taken to correct the Warrant or other authority as soon as is practicable.

Par. 102.

Par. 106.

The remark of the Committee as to noting allowances to large classes of persons in the Estimates and Accounts corresponds with the instructions embodied in a Treasury Circular, which is about to be issued, on the subject of notes of extra remuneration.

(A copy is given in the Appendix to this Minute, p. 56.)

The letter from the War Office to the Comptroller and Auditor General, mentioned in paragraph 110, as printed in the Appendix to the Report, has been accidentally omitted.

Paragraph 111 raises a point which seems to my Lords to be of some difficulty. The distinction between a merely temporary saving that arises from postponing or retarding a public work, and a permanent saving due to economical administration or a fall in prices, is real and important; and the Committee are of opinion that it "should be borne in mind, whenever Treasury sanction is asked to defray, temporarily, excesses upon other Votes out of savings on the Works Vote."

With the principle which the Committee evidently wish to enforce my Lords are in complete accord. But they may state that, of late years certainly, their sanction has not been asked for applying savings out of the Works Vote, specifically, towards meeting an expense that causes an excess on some other Vote.

Mr. Hardy will, no doubt, cause a communication to be made to my Lords respecting the proposed Inter-departmental Committee, referred to in paragraph 114, to consider the manner of dealing with the residues of soldiers' effects under Section 18 of the Regimental Debts Act.

In paragraph 115, the Committee state that there seems to be no more reason for requiring the declaration which, since 1867-68, has been appended to the foot of the Army Appropriation Account, and signed by the Accountant General (formerly by the Chief Auditor as well), to the effect that no part of the expenditure has been incurred without superior authority to that of the department, in cases where such authority is required by Regulation.

This declaration was first recommended, for both Army and Navy Accounts, in the Second Report of the Public Accounts Committee of 1867, and again in the Report of the Committee of 1868. But my Lords agree with the Comptroller and Auditor General, and the Committee of 1877, that it is no longer required for the Army Account. It need not, therefore, be appended to that account in future.

Par. 130.

(3.) With regard to those paragraphs which relate to charges defrayed by the War Office on behalf of India, my Lords feel sure that the Secretary of State will accept the conclusions at which the Committee have arrived. My Lords have only to add to them the expression of their own sense of the importance of making it an absolute rule that no alteration of moment shall be made in the form of the Army Estimates without the previous consent of this department. Any such alteration should also, as recommended by the Committee, be fully explained to Parliament.

The serious attention of the Secretary of State should be drawn to the remark made by the Committee in paragraph 123, respecting the advance of sums from Army Cash for services not authorised by Parliament.

Par. 129.

My Lords do not think they need make any further comment on this part of the Report, beyond saying that they are fully alive to the importance of applying some test to the balances shown in the Army Balance Sheet, and they will make this suggestion the subject of subsequent consideration.

In conclusion, my Lords desire me to enclose a copy of paragraph 89 of the Report, relative to the Navy Appropriation Account, in which the Committee remark upon the delay that had occurred at the War Office in sending to the Admiralty certain cash accounts,

accounts, chiefly for passage and freight, and for clothing issued to marines. Their Lordships hope that Mr. Hardy may find means of securing greater regularity for the future in preferring these claims.

I am, &c.

Appendix.

## IX.—NOTES OF EXTRA REMUNERATION.

ADVERTING to the remarks made by the Committee in paragraphs 9, 41, and 106 of their Report, my Lords direct that the following Circular be issued to all accounting departments, including the War Office and Admiralty :—

Sir (or, as the case may be),

I am directed by the Lords Commissioners of Her Majesty's Treasury to state (for the information, &c.), that in consequence of various remarks made by the Comptroller and Auditor General in his Reports on the Appropriation Accounts for 1875-76, and by the Committee of Public Accounts for 1877, in their Report of 16th May last, my Lords think it advisable to issue definite instructions to all Accounting Departments for their guidance in appending, to their Estimates and Appropriation Accounts, notes of extra remuneration, pensions, and other extraneous emoluments which may be enjoyed by officers on their establishments.

In every case of doubt reference should be made to this department, but the following will serve as general rules for determining—

- (a.) Whether a particular payment or source of income ought to be noted at all ;
- (b.) Whether it ought to be noted in the Estimate or in the Appropriation Account, or in both ;
- (c.) Whether, if a payment by one department to an officer of another department is to be noted in an Appropriation Account, the account ought to be that of the Vote from which the payment is made, or that of the Vote which bears the charge of the ordinary salary of the payee.

1.—If any salaried officer provided for in a particular Vote receives additional remuneration or a pension from another Vote, or from the Consolidated Fund, or with official permission from some local or special fund, the source and amount of such additional remuneration or pension should be noted in the Estimate in which the ordinary salary of such officer is provided ; and if he is employed on fixed salary by two different departments at the same time, a note of such double salary should appear in the Estimates of both departments ; but such notes need not be inserted in the Appropriation Accounts, unless they have, by inadvertence, escaped record in the Estimates.

2.—If the extra emoluments of an officer be of varying amount, their source and *probable* annual amount should be noted in the Estimate of the Vote in which the ordinary salary of such officer is provided ; and the actual amount received by him in the year should be noted in the Appropriation Account of that Vote.

3.—No note need be made in the Estimates of past payments to officers, which are not likely to recur in the year of Estimate ; but all such payments should be noted in the Appropriation Accounts of the Votes in which the salaries of the officers are provided, unless they were anticipated in the notes to the Estimates for the year in which they occurred.

4.—To enable accounting officers to note payments made to officers of their own departments from extraneous sources, the following rule should, in accordance with the recommendation of the Committee of Public Accounts, be strictly observed :—

Whenever payments are made by one department to an officer of another department, explicit notice thereof should be sent by the paying department to the department that accounts for the Vote in which the officer's ordinary salary is provided.

If the person receiving the payment be a civil officer receiving a pension provided for in the Superannuation Vote, the notice should be sent to the Paymaster General, in order that he may cause the payment to be noted in the Appropriation Account of that Vote. But if the pension be provided for in the Votes for Dublin Metropolitan Police, Irish Constabulary, or the Revenue Departments, the notice should be addressed to the Departments administering those Votes.

If any naval or military pensioner receives a civil salary, his pension should, of course, be noted in the Estimate providing for his salary ; and if casual remuneration be paid from a Civil Vote to such a pensioner, the payment should be noted in the Appropriation Account of that Vote. But notice of it need not be sent to the War Office or Admiralty.

5.—No detailed mention need be made in the Estimates or Accounts of extra payments to large bodies of men, based on well-defined regulations, such as the Rewards for Revenue Detections paid to the Irish Constabulary, and Soldiers' Good Conduct Pay.

I am, &c.

Appendix.**X.—COPY TO EXCHEQUER AND AUDIT OFFICE.**

Write to the Comptroller and Auditor General:

Sir,

I AM directed by the Lords Commissioners of Her Majesty's Treasury to transmit to you, for your information, the enclosed copy of their Minute, dated 31st October 1877, upon the Report of the Public Accounts Committee for 1877.

I am, &c.

## A P P E N D I X.

— 1. —

MINUTE of the Education Department, referred to on page 49 of the foregoing Treasury Minute.

At the Council Chamber, Whitehall, the 18th day of December 1876.

By the Lords of the Committee of Her Majesty's Most Honourable Privy Council on Education.

THEIR Lordships have before them a statement of the expenses, under the various heads of service, of the Loan Collection of Scientific Apparatus at South Kensington.

My Lords are fully alive to the important results of the time, thought, and labour which have been bestowed upon that collection; but they have to express their regret at finding that, in the attainment of these results, a very large amount of liabilities has been incurred without the previous sanction of the Treasury, or the submission of an Estimate to Parliament.

Their Lordships, while recording their sense of the grave financial irregularity which has thus been committed, desire to take measures to prevent the recurrence of similar cause of complaint. They, therefore, direct that whenever any excess of expenditure beyond an approved Estimate is apprehended, the officers of the Department shall at once inform the Lord President, and submit to him a letter to the Treasury explaining the causes and amount of the apprehended excess. This should be done before any unauthorised expenditure is incurred, and the Department must in no way be committed to such expenditure till Treasury sanction has been obtained.

This Minute is to be communicated to the various heads of Divisions, and a copy of it sent to the Treasury, with a request that a Supplementary Vote may be asked for in Parliament to defray such part of the expense of the Loan Collection as may not be covered by the Estimates of the current financial year.

— 2. —

LETTER from the War Office to the Exchequer and Audit Office, referred to on page 53 of the foregoing Treasury Minute.

Sir,

War Office, 16 April 1877.

WITH reference to Mr. Treherne's letter of the 6th January last, No. 50, I am directed by the Secretary of State for War to acquaint you, for the information of the Comptroller and Auditor General, that the item for the erection of new Barracks at Glasgow, estimated at the time to cost 96,000 L., was included under Part I., Vote 13, of the Army Estimates for the year 1870-71, without being specially submitted for the sanction of the Treasury. It is not the practice of this department to obtain, in addition to the general approval given to the Estimates, the separate sanction of their Lordships for each of the works proposed to be executed, nor for any alteration it may be necessary to make in the total estimated cost of the work. Each service which is to amount to more than 1,000 L. is shown distinctly in the Estimates, and whenever an alteration is necessary in the original Estimate an explanation is given.

As regards the sums provided for the services included in Parts II. and III., I am directed to inform you that they are to a great extent based upon the average previous expenditure in the districts and commands, and that the details are not finally settled until after the Army Estimates are prepared. As soon as these details are determined, and the works are from time to time ordered to be executed, the fullest information can be given to the Comptroller and Auditor General, and an abstract of the services which were sanctioned for North Britain for 1875-76 is enclosed.

I am, &c.

The Assistant Comptroller and Auditor General,  
Audit Office, Somerset House.

(signed) Fred. A. Stanley.

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## LETTER from the Postmaster General upon the Report of the Public Accounts Committee, 1877.

My Lords,

General Post Office, 15 February 1878.

WITH reference to your Lordships' letter of the 31st October last, enclosing, for my information, a copy of Paragraphs 57 to 83 of the Report of the Public Accounts Committee for 1877, relative to the Appropriation Accounts of the Post Office Votes, and to the Telegraph Capital Account, I have the honour to offer the following observations on those paragraphs of your Lordships' letter which appears to call for special attention.

*Paragraph 8.*—The correct amount of surplus on Vote 3, viz., 17,999 *l.* 11 *s.* 0½ *d.* was surrendered.

*Paragraph 9.*—The Indian Government has paid the balance due to the Imperial Government on account of the Post Office Packet Service for the year 1874-75 and 1875-76. The delay in the settlement of the account for 1874-75 was attributable to certain objections raised by the Director General of the Indian Post Office as to the method adopted by this Department in adjusting the charges and receipts relating to the Eastern Mail Service, and those objections were referred to the arbitration of Lord Halifax.

*Paragraph 10.*—Counsel has recommended that the investigation which had been made into the accounts of the Royal Mail Steam Packet Company for the year 1871 should be extended to the accounts for the years 1872, 1873, and 1874, in order that the claim upon the Company might be brought forward in such a way as to enable the arbitrators to make a final award, embracing the entire claim of the Postmaster General to a share of profits under the contract of 1868. The investigation is now in progress, and every effort is being made with the view of placing the whole matter before the arbitrators at the earliest possible date.

*Paragraph 12.*—Some further progress has been made with each of the agreements (Telegraphs) with the Greenock and Ayrshire, and the East of Fife Railway Companies, but it has not yet been found possible to complete them, although it is hoped to do so very shortly. I would, however, point out that no loss arises from the fact of their non-completion.

*Paragraph 16.*—A note, such as that which your Lordships desire, has been added to the Telegraph Capital Appropriation Account for the year 1876-77, and a similar note shall be appended to future accounts.

*Paragraph 17.*—A new Sub-head for interest on purchase-money of Telegraph Undertakings has been opened in the Vote Accounts of 1876-77 and 1877-78, and also in the Estimates for 1878-79.

The Lords Commissioners of  
Her Majesty's Treasury.

I have, &c.  
(signed) *John Manners.*





S E C O N D  
R E P O R T  
FROM THE  
COMMITTEE  
OF  
P U B L I C A C C O U N T S;  
TOGETHER WITH THE  
PROCEEDINGS OF THE COMMITTEE,  
M I N U T E S O F E V I D E N C E,  
AND APPENDIX.

---

*Ordered, by The House of Commons, to be Printed,*  
*10 July 1878.*

---

Committee of Public Accounts nominated [*Monday, 18th February 1878*] of—

Sir Walter Barttelot.  
 Lord Frederick Cavendish.  
 Mr. Cubitt.  
 Lord Eslington.  
 Mr. Goldney.  
 Mr. Thomson Hankey.

Sir John Lubbock.  
 Mr. O'Reilly.  
 Sir Charles Mills.  
 Mr. Seely.  
 Colonel Stanley.

*Ordered [Wednesday, 13th March 1878]:—*THAT the Committee have power to report their Observations, together with the Minutes of Evidence taken before them, from time to time, to the House.

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## S E C O N D   R E P O R T.

THE COMMITTEE of PUBLIC ACCOUNTS have made Progress in the Matters to them referred, and have agreed to the following SECOND REPORT:—

### REVENUE DEPARTMENTS.

#### VOTE 1.—CUSTOMS.

1. THE Comptroller and Auditor General points out in his Report that in the Customs Estimates the expenses of the Solicitor's Office are included under the general head of Law Charges, whereas in the Departments of the Inland Revenue and of the Post Office, those expenses are included under the general head of the Salaries of the whole of the establishments. It was stated to your Committee that the form of the Customs Estimates had been recently changed, with the object of bringing under one sub-head all the law charges; but that up to the present time the Treasury had been prevented by practical difficulties from adopting the same improvement in the estimates of the two other great Revenue Departments.

Q. 407.

#### VOTE 2.—INLAND REVENUE.

2. Sanction has now been given by the Treasury to the payment for extra services referred to by the Comptroller and Auditor General in the 6th Section of his Report.

Q. 428.

#### VOTE 3.—POST OFFICE.

3. Sections 3 & 4.—Your Committee regret that no progress has been made with respect to the two questions of a test examination of the London District and Provincial Post Office Accounts, as to Treasury authority, and of the mode of remuneration of sub-postmasters and receivers. The attention of your Committee has been called to these questions by the Comptroller and Auditor General in his three last Reports upon this Vote, and they were last year informed that early steps would be taken by the Treasury with respect to them.

Q. 429-435.

4. Section 8.—The question as to the excess of the cost of management of the Government Annuities and Insurances, which was referred to in the Report of your Committee last year (paragraph 65), is stated to involve matters of a technical and difficult character, and is still, as last year, under the consideration of the Treasury. It is desirable that it should be dealt with without further delay, as by law the Treasury is required to cause the tables of these annuities to be so constructed as to leave no loss in respect of costs or expenses.

Q. 436-441.

5. Section 9.—There is a difference of opinion between the Treasury and the Postmaster General as to the apportionment of rent of premises jointly occupied for Postal and Telegraph Services; and the settlement of the question has been delayed owing to the recent change of office by the Secretary of the Treasury.

Q. 442-445.

6. Section 10.—The Comptroller and Auditor General calls attention to the practice of employing persons temporarily in provincial post offices for various periods

Q. 446-464.

periods up to six months before they have received Civil Service certificates, which he regards as contrary to the provisions of the Order in Council of 1870. The Treasury is of opinion that the case in question is provided for by the regulation contained in the "London Gazette" of 16th January 1872, with respect to the employment of persons temporarily, to meet the exigencies of the public service.

7. It does not however appear that the special provisions of the above regulation (which is not, in the opinion of the Postmaster General, exactly applicable to the circumstances) have been complied with as regards the employment of these persons. It is desirable, therefore, in the opinion of your Committee, that the question should be considered by the Treasury, so that the requirements of the service may be met without any infringement of the Orders in Council.

#### VOTE 4.—PACKET SERVICE.

Q. 465-471. 8. The Comptroller and Auditor General calls attention in his Report upon this Vote for the year 1875-76, to the long pending arbitration between the Post Office and the Royal Mail Steam Packet Company. It is stated that the examination of accounts for the years 1871-74, which must be completed before the arbitration, is being proceeded with as rapidly as possible.

#### VOTE 5.—POST OFFICE TELEGRAPH SERVICE.

Q. 488. 9. Section 1.—A decision has now been arrived at by the Treasury, and communicated to the Postmaster General, with respect to the employment of an unestablished staff, and the conditions attached to such employment.

Q. 495-496. 10. Section 6.—The proposal of the Postmaster General with respect to the employment of boy messengers in Dublin and Edinburgh has received the sanction of the Treasury.

Q. 507. 11. Section 7.—The payments charged for expenses incurred in laying down private telegraph wires, which had not been submitted for Treasury authority, have now received the necessary sanction; and directions have been given by the Treasury that such payments should for the future be submitted to it for approval by means of quarterly schedules.

#### POST OFFICE TELEGRAPH CAPITAL ACCOUNT.

Q. 1021. 12. It is stated that legal questions are the cause of the prolonged delay in the settlement of the agreements with the Greenock and Ayrshire, and the Leven and East of Fife Railway Companies; but that the delay, however undesirable on other grounds, does not result in any loss to the Exchequer.

#### NAVY APPROPRIATION ACCOUNT.

Q. 509-523. 13. Section 2.—The Comptroller and Auditor General mentions in his Report certain cases in which he has had difficulty in ascertaining whether expenditure has been properly classified, as instances to illustrate the importance of framing the descriptive titles and explanations of the various sub-heads with the utmost possible precision. With the greatest care in framing the Estimates, it must be impossible, without unduly increasing their bulk, to include all the particulars which govern classification. In cases of uncertainty arising from this cause, the difficulty would, in the opinion of your Committee, be best met if the Comptroller and Auditor General were enabled to satisfy himself from the records of the Department that the particular service was in contemplation when the Estimate was framed, as suggested by the Accountant General in his evidence.

Q. 1048. 14. Section 3.—The Admiralty has now applied for Treasury authority for the expenditure incurred in connection with the conversion of Her Majesty's ship "Conqueror" into a training ship, and your Committee were informed that such sanction would be given.

Q. 532-544. 15. Section 4.—Your Committee do not think it advisable, for the reasons specified in the Treasury Minute of 25th January 1878, to recommend that any change

change should be made in the mode in which the payment to Mr. McCulloch for his services in connection with the purchase of coal and oil for the Admiralty, has been recorded.

16. Section 5.—It was stated to your Committee that there had been a controversy, extending over a long period, between the several departments, as to the mode in which stores supplied to ships lent for quarantine purposes, should be charged, and that hence had arisen the long delay in the settlement of the claims of the Admiralty. In the course of years over which these claims extend, different principles have been in force, and considerable complication has consequently arisen. A definite system has now been adopted; and as the question is one which involves no additional charge upon the Exchequer, but solely refers to the particular Department of the State which has to bear the charge, your Committee do not consider it necessary to enter further upon it.

Q. 545-551.

17. Section 6.—The payment of the sum of 20,000 *l.* to Messrs. Penn & Sons by imprest bill for work done to 31st March 1877, was, as is allowed by the Accountant General of the Navy, one of an unusual character, and only to be justified under the special circumstances of the case. It is important, in the opinion of your Committee, that it should not be regarded as a precedent which would justify, in the future payments to contractors by imprest. Inasmuch, however, as satisfactory evidence was given immediately after the payment was made, that the work had really been performed before the 31st March, your Committee do not recommend that the charge in question should be disallowed in the present Account.

Q. 555-568.

18. Section 17.—With reference to the sum of 605 *l.* 15 *s.* 4 *d.* for works executed at Portsmouth, between March and May 1876, the payment of which was deferred from the year 1876-77 to the year 1877-78 by the Accountant General of the Navy, your Committee must again express their decided opinion that payments which have become due should not be deferred from one financial year to another, in order to keep the expenditure within the Parliamentary grant. Such postponement does not in fact keep the expenditure within the limits sanctioned by Parliament, but only serves to keep from the knowledge of Parliament the fact that those limits have been exceeded. Your Committee might not have thought it necessary to remark upon the present instance of the infraction of this principle, which is unimportant as regards the amount of the sum involved, and which was ordered by the Accountant General of the Navy when much pressed by work at the very close of the financial year, had it not been for the view expressed by that officer that the Admiralty Minute of 1876 gave him some discretion as to the time of making payments. The Minute does not appear to your Committee to confer any such discretion; if it had done so, it would in their opinion have contravened the sound principle that all liabilities should be discharged as soon as they are fully matured.

Q. 568-586.

19. Section 18.—The points raised by the Comptroller and Auditor General with respect to re-payments credited to Vote 17, belong to the general question of Exchequer Extra Receipts, and cannot be conveniently dealt with until the general principles have been decided upon which are to regulate those receipts for the future.

20. Sections 16, 17.—The Committee of Public Accounts in their Report last year called attention to the importance of completing the system of Audit of Public Accounts by some examination of the balance sheets of the several Departments, and by the testing of the balances. No steps have been taken by the Treasury in consequence of this suggestion; but the Comptroller and Auditor General has called attention to any items in the balance-sheet of the Admiralty which appeared to him to require explanation on the part of the Department. The result has already been that a large number of claims which had been outstanding for many years have been adjusted, or are now in the course of adjustment.

Q. 588-599.

21. Section 18.—Your Committee have heard with much satisfaction, that by the direction of the Treasury, the Test Audit which has now been applied for two years to the accounts of Army expenditure, will be applied by the Comptroller and Auditor General to the Navy Appropriation Account for the year

Q. 607-608.

- 1877-78; so that the system of Audit under the provisions of the Exchequer and Audit Act will then be applied to every great department of the public service. They regret, however, to learn that at present the necessary accommodation has not been provided at the Admiralty for the officers of the Comptroller and Auditor General, and they trust that suitable arrangements may be made without undue delay.
- Q. 1068.

### ARMY APPROPRIATION ACCOUNT.

- Q. 736-741. 22. In consequence of the prolonged delay in providing the promised accommodation for the staff of the Comptroller and Auditor General at Winchester House, the examination of the expenditure as regards the detail test has been conducted up to the present time under great difficulties. Your Committee are informed that this delay has been caused by various unforeseen circumstances; and that the necessary accommodation will now be very shortly provided.
- Q. 962-964.
- Q. 742-743. 23. Section 5.—The Committee of Public Accounts in their Report last year, called attention to the importance of consolidating, with as little delay as possible, the various Royal Warrants regulating the pay and allowances of the Army; and of preparing a codified statement of authorities for expenditure. The Treasury in their Minute of 31st October 1877, stated their readiness to sanction such outlay as might be shown to be necessary for the purpose. No such codified statement has as yet been furnished to the Comptroller and Auditor General; but your Committee were informed that the work was being proceeded with as rapidly as possible.
- Q. 744-746. 24. Section 6.—The Inter-departmental Committee appointed to consider in what mode effect should be given to Section 18 of the Regimental Debts Act of 1873, has concluded its inquiry, and its Report is stated to be now under the consideration of the Secretary of War.
- Q. 746-774. 25. Sections 7 to 11.—Your Committee consider that the Contingent Allowances to officers commanding regiments of the Yeomanry Cavalry should be regarded as final payments, as the unexpended portion of such allowances is not ordinarily repayable to the Exchequer, but is funded on behalf of the several regiments to meet the expenditure, which necessarily varies from year to year. In the case, however, of a regiment being disbanded, any unexpended balance is re-payable to the Exchequer; the question as to what steps, if any, are necessary to provide for such a contingency, should therefore be considered by the War Office and the Treasury.
- Q. 776-777. 26. Section 12.—An expenditure of a fixed amount has been sanctioned by the Treasury on account of the Intelligence Department; it would seem to be desirable that a separate sub-head should be opened for this Service, as recommended by the Comptroller and Auditor General. Your Committee were informed that this recommendation would be considered by the War Office.
- Q. 778-788. 27. Sections 13 & 14.—The charge of 2,714 *l.* 10 *s.* against Vote 13, in respect of land purchased at Malta in the year 1876-77, for which the prescribed vouchers have not been produced, and for which the sanction of the Treasury was applied for by the War Office, as stated by the Comptroller and Auditor General in his Report, has not received such sanction. The charge should therefore not be allowed; and the net surplus upon this Account to be surrendered should be increased by the sum in question.
- Q. 1045.
- Q. 796-801. 28. Section 17.—It was stated to your Committee that the works in connection with the supply of water to the barracks at Gibraltar, for which the sum of 324 *l.* 15 *s.* 7 *d.* is charged against Part II. of Vote 13, were distinct from the service provided for under Part I. of the same Vote, under the heading, "Laying on Water at Gibraltar." Such being the case, no objection can be taken to the mode of recording the charge; but in the opinion of your Committee the Comptroller and Auditor General has rightly called attention to it, as if the two works had not been absolutely distinct, the course pursued would have been open to the objections pointed out by him in his Report.
- Q. 808-812. 29. Sections 18, 19.—It was stated to your Committee that the allowances referred to by the Comptroller and Auditor General in these sections of his Report,

Report, as originally granted, were not intended as superannuation allowances under the Superannuation Act. As, however, they are now regulated by the provisions of that Act, it would seem that they would be more correctly charged, as suggested by the Comptroller and Auditor General, to Vote 24, "Superannuation Allowances," than as at present to Vote 23, "Out-Pensions."

30. Sections 23, 24.—The Comptroller and Auditor General states in his Report, that as he was not in possession of information which would enable him to ascertain whether the amounts due from various Colonies as contributions in aid of Military Expenditure were properly brought to account, he applied to the War Office in December last for the particulars of the regulations approved by the Treasury which governed those contributions. It appears that the War Office has been unable up to the present time to reply to the communication, in consequence of the intricacy of the questions involved. It is manifest, however, that, not only for the information of Parliament, and for the securing of proper payments into the Exchequer, but in justice to the several Colonies, it is essential that there should be no doubt as to the amount of the contributions payable by them.

Q. 814-817.

31. The Comptroller and Auditor General points out, from the limited information at his command, that this condition is not at present secured as regards the contributions from Ceylon and Honduras.

The military contribution from Ceylon was fixed in 1867 at 1,600,000 rupees, until 1st July 1874, after which date it was subject to revision. In consequence of the Ceylon Rifles having been disbanded in 1873, an agreement between the Colonial Office and the War Office was sanctioned by the Treasury, whereby the contribution was reduced to 1,240,000 rupees for the year ending 1st July 1874. In the negotiations as to the subsequent contribution from Ceylon, it was agreed between the Colonial Office and the War Office, that the pensions of the Ceylon Rifles should no longer be paid by the War Office and included in the charges which the annual contribution was calculated to cover, but should be paid directly by the colony. No provision has consequently been made in the Army Estimates for these pensions since the year 1873-74. No final arrangement has, however, been made with respect to the amount of the contribution from Ceylon. The colony has continued to pay 1,240,000 rupees a year, the actual sum at which its contribution was fixed for the year 1873-74, when it included the charge for the pensions of the Ceylon Rifles. The War Office has continued to pay these pensions pending a definite settlement of the questions in dispute, out of the Army balances; but has placed the amount so paid (24,252 *l.* 16 *s.* 1 *d.*) to the debit of the colony in the War Office books. The prolonged delay in the settlement of this question is due to difference of opinion between the Colonial Office, the War Office, and the Treasury. But the questions involved cannot, in the opinion of your Committee, be of very great complexity, and any further delay in their settlement is much to be deprecated.

Q. 820-872.

32. Your Committee would refer to the observations made in the 123rd paragraph of the Report of last year, with respect to the advance of sums from the Army Balances for services not authorised by Parliament. They regret again to have to animadvert upon the irregularity of payments made by the War Office for a course of years from the Army Balances of moneys not authorised by Parliament. In their opinion application ought to have been made to Parliament for a grant, as soon as it was found necessary for the War Office to continue to pay the pensions of the Ceylon Rifles.

33. Section 31.—The Comptroller and Auditor General points out in his Report that in addition to the amounts which have been paid to the Exchequer from time to time as colonial contributions, there is standing to the credit of "Exchequer Extra Receipts Suspended Credits" a sum of 28,984 *l.* 8 *s.* 10 *d.*, which has been received at various times since the year 1867-68 from the Colony of Honduras. Your Committee recommend that this sum should be paid over to the Exchequer by the War Office. They would further state their opinion that an arrangement should be come to with as little delay as possible with respect to the balance of 7,333 *l.* 3 *s.* 8 *d.* outstanding against the Honduras Government for claims prior to the 1st January 1872, and that the amount of contribution payable by the Colony should also be determined without further delay.

Q. 873-878.

Q. 1046-1047.



- Q. 879. 34. Sections 32, 33.—In accordance with the suggestions of the Comptroller and Auditor General, the balance standing in the War Office books to the credit of the "Volunteer Account, Capitation Grant," has been posted to the credit of the Exchequer.
- Q. 880-898. 35. Sections 34, 35.—It was stated to your Committee that the gratuities payable out of the fund arising from fines for drunkenness in the Army have been reduced in order to meet the deficiency referred to by the Comptroller and Auditor General, and that the sums received from the Militia fines will be wholly applied to the Militia.
- Q. 899-908. 36. Sections 36-40.—The questions referred to by the Comptroller and Auditor General in these sections of his Report are stated to have been all concluded, with the exception of a claim for interest by the Sittingbourne and Sheerness Railway Company.
- Q. 909. 37. Section 41.—A reply has been received by the Comptroller and Auditor General to his communication with reference to the "Remittance Account," in respect of remittances made by soldiers and others prior to the 1st April 1871, and the arrangements proposed are, it is stated, of a nature to meet his views.
38. For the reasons stated in paragraph 27 of this Report, the net surplus to be surrendered to the Exchequer is 143,969*l.* 15*s.* 10*d.*, and not 141,255*l.* 5*s.* 10*d.*, as stated in the Report of the Comptroller and Auditor General.

#### ARMY PURCHASE COMMISSION ACCOUNT.

- Q. 625-632. 39. Your Committee agree with the Comptroller and Auditor General in the opinion expressed in his Report that, whatever may be the practical convenience of the system adopted by the Army Purchase Commissioners of making payments for compensation for the sale of commissions, not to the officers to whom the compensation is due, but to Army agents, no such payments should be taken credit for in the Appropriation Account until the final vouchers are produced.

#### FORTIFICATIONS DEFENCES LOAN ACCOUNT.

- Q. 633-642. 40. This Account shows that payments have been made in excess of the sums assigned by the Act 23 & 24 Vict. c. 109, and subsequent Acts under various heads, amounting in all to 156,406*l.* 13*s.* 11*d.* The Treasury has authority to sanction the application of a surplus under one head, to meet the deficit under another: but such formal sanction has not as yet been given. Under an agreement arrived at between the Treasury and the Secretary of State for War, the excess under any head is to be reported to the Treasury from time to time; but it is understood that the formal Treasury sanction is not to be given until the completion of the fortifications authorised by the several Acts. From a return furnished by the War Office, and printed in the Appendix, it appears that it is not expected that the total expenditure will exceed the limits authorised by Parliament. Had the contrary been the case, it would have been desirable, in the opinion of your Committee, that steps should have at once been taken with respect to these excesses.
- Q. 646-649.

#### MILITARY FORCES LOCALISATION.

- Q. 910-913. 41. The Comptroller and Auditor General calls attention in his Report to the payment of the sum of 951*l.* 12*s.* 5*d.* (part of an estimated expenditure of about 13,000*l.*), for the erection of new Head Quarter Offices at York, which has been charged against the head "Purchase of Land for a Tactical Training Station," for which the sum of 300,000*l.* was provided for in the Schedule of the Military Forces Localisation Act, 1872. This expenditure does not appear to fall properly under the above-named head, or under any of those specified in the Schedule. Although no objection is taken in the Treasury Letter of the 4th March 1878 to the mode in which this expenditure has been charged, your Committee

Committee are of opinion that it should have been provided for under the Vote for Works and Buildings in the Army Estimates, as suggested by the Comptroller and Auditor General.

42. The Comptroller and Auditor General further points out, that in consequence of its having been found impossible to purchase sufficient land for the purpose, the original intention of establishing a new tactical station in the north of England, as stated by the Secretary of State for War in his speech on the second reading of the Military Forces Localisation Bill in 1873, had to be abandoned; and that it was therefore decided to extend the War Office property at Aldershot by the purchase of certain commoners' rights for the sum of 150,000 *l.* It was stated to your Committee that the course which had been pursued was authorised by the Treasury, and they are not prepared to say that it may not be technically correct. This leaves a very wide discretion to the War Office and to the Treasury; and it would seem to be worthy of consideration by Parliament whether, in the case of expenditure not annually voted, but authorised by statute, and to be defrayed by loan, the purposes to which such loans may be applied should not be more specifically defined.

Q. 977-983.

### CHELSEA HOSPITAL.

43. The Comptroller and Auditor General, in this his First Report upon the Account of the Receipts and Expenditure of the Commissioners of Chelsea Hospital, in respect of Army Prize and Legacy Funds, states the total amount expended upon the hospital, and calls attention to the variety of the sources from which that expenditure is defrayed, and to the difficulties which must hence occasionally arise in deciding upon the head of revenue to which certain expenditure should be charged. As regards the character of the expenditure from the Army Prize Fund, he states that it appears to him to have been applied in conformity with the intentions of Parliament, as expressed in the several Acts relating thereto. The Secretary to the Commissioners, who is the accounting officer, stated that the Commissioners had not found any difficulty as to its application. In the opinion of your Committee, the question whether any change is desirable in the present arrangements for defraying the necessary expenses of the hospital, should be considered by the Treasury when the general principles applicable to all extraneous receipts throughout the public services have been finally laid down.

Q. 688-699.

Q. 709-721.

Q. 941-947.

44. The Comptroller and Auditor General further suggests that as the Commissioners may to a certain extent be at a loss to decide with reference to the application of the Legacy Funds, it might be of advantage to the hospital that the Commissioners should avail themselves of the provisions of the Charitable Trusts Act (36 & 37 Vict. c. 17), which enable the Charity Commissioners to entertain applications for their opinion upon such questions. It was stated, however, to your Committee that the Commissioners did not see any necessity for such a step, and that they consider that they have sufficient powers as to the application of these funds. Your Committee accordingly do not think it necessary to make any recommendation upon the subject, especially as it will now be the duty of the Comptroller and Auditor General to call the attention of Parliament to any application of these funds which he may deem contrary to the conditions of the several trusts.

Q. 692-708.

Q. 723-735.

Q. 948-961.

### CONSOLIDATED FUND.

45. Section 1.—The Treasury is in communication with the Bank of England and the Bank of Ireland as to the form of the account which it is agreed should be rendered by the respective banks of the payments from the issues from the Exchequer for the interest of the Public Debt.

Q. 650-655.

46. Section 5.—The return printed in the Appendix shows that the amounts outstanding in arrear for the year 1876-77 in respect of advances from the Consolidated Fund to the Admiralty on account of loans to Colonial Docks, to which the Comptroller and Auditor General has called attention in his Report, have been paid, with the exception of the interest due by the Anglo-Maltese Hydraulic Dock Company for the last quarter of that financial year.

Q. 657-662.

Q. 1049.  
Q. 664-676.  
Q. 1050-1052.

47. Section 9.—The question raised by the Comptroller and Auditor General in his letter to the Treasury of 5th January 1878, on the Public Works Loan Accounts, as to the examination by the officers of his department of the securities for the loans has been decided by the Treasury requesting the Comptroller and Auditor General to ascertain that the deeds are duly drawn, and that they are in existence. A provision has been inserted in the Public Works Loans Act of the present Session to enable the Local Government Board to satisfy themselves that the loans are applied to the purposes for which they are advanced; and the Treasury has determined to leave exclusive action to the Local Government Board on this point for the present.

Q. 677-686.

48. Your Committee has heard with satisfaction that the Treasury is making arrangements for furnishing to the Comptroller and Auditor General accounts of all loans granted out of public money, so that they may undergo examination by him. The accounts of the loans in question have not been really examined for a very long period; the work, therefore, which the Treasury has undertaken involves a large amount of labour, but it is stated that it is now being actively prosecuted.

#### CIVIL CONTINGENCIES FUND.

Q. 914-928.  
Q. 1057.

49. No payments have as yet been made by the Dominican Government on account of the Bills which fell due on 27th June 1877, and 27th December 1877. Your Committee are of opinion that it is worthy of consideration whether this Account should not now be closed; any sums which may hereafter be received from the Dominican Government being paid over to the Exchequer.

#### TREASURY CHEST ACCOUNT.

#### WOODS AND FORESTS ACCOUNTS.

#### GREENWICH HOSPITAL CAPITAL AND INCOME ACCOUNT.

#### GREENWICH HOSPITAL AND SCHOOL ACCOUNT.

50. No observations arise upon these accounts.

#### WAR OFFICE (CHARGES DEFRAIDED ON ACCOUNT OF INDIA).

Q. 986-987.

51. The Committee of Public Accounts in their Report last year expressed their strong opinion as to the urgent necessity of an early adjustment of the claims of the War Office upon the India Government with respect to the Home charges of troops serving in India, and of an agreement as to the basis of charges for the future on account of these troops. Your Committee have therefore thought it desirable to defer from time to time their consideration of this Account, in the hope that such a settlement might soon be arrived at.

52. They have much satisfaction in now being able to report that the proposals of the Treasury with respect to the Home charges which have remained unadjusted for more than eight years, have been accepted by the Secretary of State for War and the Secretary of State for India in Council. The minute explaining the nature of these proposals was laid before your Committee, and is printed in the Appendix.

Q. 1027-1029.

53. Owing to the late period at which this decision was arrived at, it has not been as yet possible to communicate it to the Comptroller and Auditor General. Your Committee therefore consider it desirable to defer their further consideration of this Account until next Session, when they can have the advantage of the observations of the Comptroller and Auditor General as to the manner in which the charges contained in it may be affected by the final adjustment of accounts between the War Office and the India Government.

10 July 1878.

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## PROCEEDINGS OF THE COMMITTEE.

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*Wednesday, 10th April 1878.*

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### MEMBERS PRESENT:

Lord FREDERICK CAVENDISH in the Chair.

Sir Walter Barttelot.  
Sir John Lubbock.  
Sir Henry Selwin-Ibbetson.  
Mr. Cubitt.

Mr. Seely.  
Mr. Thomson Hankey.  
Mr. Goldney.

The Committee deliberated.

The following Accounts were considered :—Chelsea Hospital ; Army ; Military Forces Localisation ; Civil Contingencies ; Treasury Chest and Consolidated Fund.

Mr. *Reginald E. Welby*, Mr. *Charles L. Ryan*, Major General *George Hutt*, Mr. *John Milton*, Mr. *Robert H. Meade*, and Mr. *Charles M. Clode*, were examined.

[Adjourned till Wednesday, 19th June, at Two o'clock.]

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*Wednesday, 19th June 1878.*

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### MEMBERS PRESENT:

Lord FREDERICK CAVENDISH in the Chair.

Sir Walter Barttelot.  
Sir Henry Selwin-Ibbetson.  
Mr. Seely.  
Sir Henry Holland.

Mr. Thomson Hankey.  
Sir John Lubbock.  
Mr. Goldney.

The Chelsea Hospital Account and Army Appropriation Account were further considered, as well as the Military Forces Localisation Account ; the War Office (Charges defrayed on account of India) Appropriation Account ; the Post Office Appropriation Account ; the Post Office Packet Service Account ; the Telegraph and Telegraph Capital Accounts ; and the Navy Appropriation Account.

Mr. *Stephen Cave* (a Member of the House), Mr. *Reginald E. Welby*, Mr. *Charles L. Ryan*, Mr. *Robert H. Meade*, Mr. *John Milton*, Mr. *Algernon B. Mitford*, and Mr. *Stevenson A. Blackwood*, were examined.

[Adjourned till Wednesday, 3rd July, at Two o'clock.]

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*Wednesday, 3rd July 1878.*

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## MEMBERS PRESENT:

Lord FREDERICK CAVENDISH in the Chair.

Sir Walter Barttelot.  
Mr. Cubitt.  
Mr. Goldney.  
Mr. Thomson Hankey.

Sir Henry Holland.  
Mr. Seely.  
Sir Henry Selwin-Ibbetson.

The following Accounts were further considered:—War Office (Charges defrayed on account of India); Army and Navy Appropriation Accounts; the Consolidated Fund Account; and the Civil Contingencies Fund Account.

Mr. *Reginald E. Welby*, Mr. *Charles L. Ryan*, and Mr. *John Milton*, were examined.

[Adjourned till Wednesday next, at Two o'clock.]

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*Wednesday, 10th July 1878.*

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## MEMBERS PRESENT:

Lord FREDERICK CAVENDISH in the Chair.

Sir Henry Selwin-Ibbetson.  
Sir Charles Mills.  
Sir Walter Barttelot.  
Mr. Thomson Hankey.

Mr. Seely.  
Sir Henry Holland.  
Mr. Cubitt.  
Sir John Lubbock.

DRAFT REPORT proposed by the *Chairman* read the first and second time; considered, paragraph by paragraph, and *agreed to*, with Amendments.

Question, That this Report, as amended, be the Second Report of the Committee to the House,—put, and *agreed to*.

*Ordered*, To Report, together with the Minutes of Evidence, and an Appendix.

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MINUTES OF EVIDENCE.

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# LIST OF WITNESSES.

*Wednesday, 13th March 1878.*

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# MINUTES OF EVIDENCE.

Wednesday, 13th March 1878.

## MEMBERS PRESENT:

Lord Frederick Cavendish.  
Sir Walter Barttelot.  
Mr. Cubitt.  
Lord Eslington.  
Mr. Goldney.

Mr. Thomson Hankey.  
Sir John Lubbock.  
Sir Charles Mills.  
Mr. Seely.  
Colonel Stanley.

LORD FREDERICK CAVENDISH, IN THE CHAIR.

## CIVIL SERVICE APPROPRIATION ACCOUNTS.

### CLASS V.

#### Vote 5.—COMMISSIONS FOR SUPPRESSION OF THE SLAVE TRADE.

Mr. REGINALD EARLE WELBY, C.B., and Mr. CHARLES LISTER RYAN, called in;  
and further Examined.

*Chairman.*

619. (To Mr. *Welby*.) You undertook, I think, at the last meeting of the Committee to ascertain if any further information could be given to the Committee with respect to the amounts charged under Sub-heads C. and D., which were insufficiently supported by vouchers. Have you obtained any further information?—I had some communication with the accounting officer at the Foreign Office, and I learned from him that the Foreign Office had been, I may say, repeatedly in communication with the India Office, with a view of obtaining from the India Office the vouchers to satisfy the Comptroller and Auditor General. The accounting officer at the Foreign Office added that he was informed by the India Office that these vouchers had been returned to India, and the India Office could not say when they would come back to England. He further informed me that the Secretary of State, in answer to an application from the India Office for the payment of the sum due this year, had refused payment until the proper vouchers could be produced. The report of this Committee will be communicated at once to the Foreign Office, with a view to its communication to the India Office, in order to make the India Office understand that they must lose no time in procuring those vouchers; and the accounting officer of the Foreign Office is in hopes that before the time the Committee rises, at all events, the necessary vouchers will be forthcoming.

620. These payments are repayments to the India Office of sums spent a considerable time ago by the India Office?—That is so.

O.9.

*Chairman*—continued.

621. Can you state at all in what year those payments were made?—I believe they were made between 1874 and 1876.

622. When was the first application made by the Foreign Office for the vouchers?—In the year 1876 a Departmental Committee sat, and recommended that these sums should be repaid. A Supplemental Vote for that purpose was taken at this time last year, and the Foreign Office, on receiving an application from the India Office for the amount towards the close of March, then asked for vouchers, and when the vouchers were not forthcoming, they endeavoured to make it a condition with the India Office that the vouchers should be forthcoming immediately. I believe that in the interval between the 31st of March last year and the present time, the Foreign Office have written no less than three times to the India Office with a view of getting the vouchers.

623. Then application was made for them about a year ago?—Yes.

### CLASS VI.

#### On Vote 3.

#### RELIEF of DISTRESSED BRITISH SEAMEN ABROAD.

624. (To Mr. *Ryan*.) Has the voucher yet been received by the Comptroller and Auditor General for the payment of 5 l.?—Yes; the Board of Trade have placed in the hands of the Comptroller and Auditor General a voucher for the amount paid to the lodging-house keeper.

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Mr. *Welby*, C.B.,  
and Mr. *Ryan*.  
13 March 1879.



Mr. Welby, C.B.,  
and Mr. Ryan.

13 March 1878.

## ARMY PURCHASE COMMISSION APPROPRIATION ACCOUNT.

The Right Honourable General Sir EDWARD LUGARD, G.C.B., called in; and Examined.

*Chairman.*

Sir E. Lugard, G.C.B. 625. (To Sir E. Lugard.) THE Comptroller and Auditor General states, at the conclusion of the second paragraph of his Report, that "whatever the difficulties referred to may be, it does not appear to me that the Commissioners are thereby released from the duty of obtaining final receipts from the officers compensated; and under any circumstances it is, in my opinion, objectionable on public grounds that they should take credit in their accounts for payments in support of which they are unable to produce final vouchers." Have you any remark to make with respect to that observation?—We have invariably, from the commencement of our labours, obtained personal receipts from the officers. Our plan is to pay the money, as was the custom before the abolition of purchase, through the agents of the regiment to which the officer belonged, for the reason that the agent generally has small regimental accounts to deduct from the amount that the officers may receive, and often the officers have to pay back the passage of their successor on foreign service; a number of other little things also render it necessary that the money should go through the hands of the agents. It is an object with us to place the money to the credit of the officer at the moment he is gazetted; he loses his pay at once, and therefore we consider it right that the money should be in his banker's, as it were, on the very day on which he is gazetted out of the service. Then it rests with the agents to obtain a receipt from the officer before he pays this money over to him, and in no case has the receipt been omitted. There have now and then been delays in consequence of an officer's insolvency, and, as is explained by Messrs. Cox & Co. in a letter which we sent to the Comptroller and Auditor General, in one case, that of Colonel Ford, of the Guards, there was great difficulty, but eventually the Paymaster General of Bankruptcy gave a receipt, which was accepted by the Audit Office.

626. (To Mr. Ryan.) Has the receipt in the case of Lieutenant Colonel Ford now been received by the Comptroller and Auditor General?—Colonel Ford is dead, and therefore, of course, we can never get his receipt. (Sir Edward Lugard.) It is the receipt of the Paymaster General of Bankruptcy. (Mr. Ryan.) Of course, in the event of a person dying, we should accept the

*Chairman—continued.*

receipt of his representatives. In this case we have not got the receipt of the representatives; the estate is still in Chancery, and there is no final settlement. The object of this paragraph was rather to call attention to the practice which is pursued, and these cases are given as instances of taking credit in the accounts as final payments for sums not supported by the receipts of the persons to whom the money was finally payable. That has sometimes led to a good deal of difficulty in getting the receipts afterwards, and it does not seem to me to be a correct principle of account, to charge these sums to the Vote without producing at the same time to the Comptroller and Auditor General the receipt of the person to whom the money was payable.

627. (To Sir Edward Lugard.) In almost all cases you would be able to obtain the receipt of the officer before your Account is sent in, would you not?—Yes, almost invariably. I do not remember any case except this where a receipt has been delayed, and the delay in this case was owing to the death of the officer and the insolvency of his estate.

*Mr. Seely.*

628. When you have paid the money to the agent, do you take the receipt of the agent on account of the officer?—Yes, immediately.

629. Have you more than one agent?—Each army agent has a certain number of regiments, and our custom is to pay the money to an officer through the agency of the agent for his regiment.

630. You are satisfied with the responsibility of the agent of the regiment?—Quite so.

*Sir Walter Barttelot.*

631. It would be a most inconvenient thing, would it not, to pay an officer in any other way than through the agent of his regiment?—Yes, I scarcely know how it could be done; it would involve us and the State in litigation and inconvenience.

632. In fact, those are the only cases in which the receipts have not been able to be produced?—They have been produced; that is to say, an officer who is dead, of course cannot sign a receipt, but the Bankruptcy Paymaster General has given a receipt in his case.

[Sir Edward Lugard withdrew.]

## FORTIFICATIONS (DEFENCES LOAN).

Mr. WILLIAM H. WHITE called in; and Examined.

*Chairman.*

Mr. White.

633. You are the Deputy Accountant General of the War Office?—I am.

634. In the Report of the Comptroller and Auditor General, an account is given of pay-

*Chairman—continued.*

ments which have been made in excess of the sums assigned by the Act 23 & 24 Vict. c. 109, under certain heads?—Yes.

635. Has any arrangement been come to with the

FORTIFICATIONS (DEFENCES LOAN)—*cont<sup>d</sup>*.*Chairman*—continued.

the Treasury with respect to such over expenditure?—That question was raised in the Third Report of the Committee of Public Accounts of the year 1876; it is referred to in Question 722, at page 3. The purport of the answer was that the Treasury has authority under the Act to sanction the application of a surplus on one head to meet a deficiency on another.

636. Has that sanction been given in the case of these payments?—I believe it has. I am not absolutely certain.

637. Are you able to state positively whether the expenditure on the other heads will fall sufficiently short to allow these excesses to be met in that way?—We have reason to presume that it will, subject to questions in arbitration which are still under discussion.

638. (To Mr. Welby.) Can you say whether the Treasury sanction has been given to the excesses of expenditure under these heads?—A definite sanction has not been given, but an arrangement was made whereby the definite sanction of the Treasury was reserved until the completion of the works.

639. Was permission given in any form?—I believe I am right in saying that the cases of excesses have been reported to the Treasury under an agreement arrived at between the Treasury and the Secretary of State for War. The understanding was that a formal assent would be given at the close of the works, but no absolute sanction was given.

640. Apart from such permission, I apprehend that the sums not specially provided for by the Act of Parliament would have to be defrayed out of the Army Estimates?—Of course, if the consent is not given, the case must be reported to Parliament.

641. But I understand you to say that Treasury permission has been given in some form?—An understanding has been arrived at between the Treasury and the Secretary of State for War, as to the time and manner in which the assent shall be given, therefore the War Office is, so to speak, acting in its right in the matter; but the actual formal assent to the transfers has not been given, and will not be given until the expenditure is complete.

642. Would it not be strictly correct that any expenditure not specially provided for under the Act should be defrayed out of the annual Estimates for Army Services, and not out of the loan?—The Fortification Act of 1869, 32 & 33 Vict. c. 76, makes a different arrangement. It provides that in the application of the moneys borrowed under the Act (sect. 3), "regard shall be had to the sums estimated as the cost of each work in the schedule, and no greater sum shall be applied to the cost of any one of such works than the estimated sum, except under a joint certificate of the Commissioners of the Treasury and the Secretary of State that the excess so expended in any one work is compensated by a deficiency of cost in some other work."

*Colonel Stanley.*

643. (To Mr. White.) To the best of your knowledge, is it not the case that with regard to 0.9.

FORTIFICATIONS (DEFENCES LOAN)—*cont<sup>d</sup>*.*Colonel Stanley*—continued.

some of these services, land has to be surrendered again, and various legal and other arrangements made, and some of those arrangements are even now pending for a legal opinion?—Yes.

644. A general sanction was given by the Treasury to meet these cases, with a view to arrangements being come to as far as possible to avoid the expenditure for the special works, which were intended to be executed out of the loan, coming upon the Estimates?—Yes.

*Lord Eslington.*

645. (To Mr. Ryan.) The Comptroller and Auditor General, in the second paragraph of his Report, makes this observation: "The Account has been examined to the same extent as the Accounts of Army Voted Services." It appears, however, from the paper before us that this account has been examined in detail. I understand that the Audit of Army Voted Services is simply a test audit at present; how do you reconcile those two things?—This paragraph, which is one that has been inserted ever since this Account has been examined, means that the Account has been examined as regards appropriation, in the same way as the Army Services Account is examined. The appropriation examination of the Army Account is now, and always has been, a perfect examination, so far as appropriation is concerned. The test examination applies only to the detail of payments. Every voucher in the Army Account passes through the hands of the audit officer with reference to the appropriation, but not with reference to the detailed payments which may be contained in it. These accounts have been subjected to the appropriation examination, but not to the further examination of detailed payments.

*Chairman.*

646. Have you any observation to make with respect to the course which has been pursued with regard to this excess of expenditure?—When this excess of expenditure first took place, the attention of the Audit Office was called to it, and we communicated with the Treasury on the subject, with reference to the provisions of the Act. The Treasury were then of opinion that it would not be desirable that the formal certificate required by the Act of joint concurrence by the Secretary of State for War and the Treasury in the application of a surplus on one head to meet a deficiency on another, should be given until the expenditure was finally closed. The Committee will see by the Account before them that there is a sum of about 130,000 £. still unexpended. I presume that the account will in the course of a year or so be finally closed, and that the proper certificate for the sanction of the excesses will then be given.

*Mr. Seely.*

647. (To Mr. White.) Have you any account at the War Office that will show the amount still required to be expended for these various works?—I think there is such an account, as far as it can be estimated.

648. Mr.

Mr. Welby, C.B.,  
Mr. Ryan, and  
Mr. White.

13 March 1878.

Mr. Welby, C.B.,  
Mr. Ryan, and  
Mr. White.

# FORTIFICATIONS (DEFENCES LOAN)—*contd.*

Mr. Seely—continued.

13 March 1878.

648. Mr. Ryan has just stated that there are 130,000 *l.* in hand; what I think the Committee would like to know is, whether that 130,000 *l.* will cover the whole cost of the various works?—The estimated cost of each work is stated in the account entered in the Paper before you.

# FORTIFICATIONS (DEFENCES LOAN)—*contd.*

Mr. Seely—continued.

649. But if you could let the Committee know what is the amount which will probably have to be expended in order to complete the works, we shall then know whether there will be a deficit upon the whole or not?—I will obtain such a statement.

[Mr. White withdrew.]

## CONSOLIDATED FUND ACCOUNT.

Chairman.

650. (To Mr. Welby.) In the second paragraph of the Report of the Comptroller and Auditor General, it is stated that a letter has been addressed by him "to the Lords Commissioners of Her Majesty's Treasury, on the subject of Accounts being rendered by the Bank of England and the Bank of Ireland, with regard to the Issues from the Exchequer in respect of the 'Permanent Charge of Debt,' and interest, &c., not forming part of the Permanent Charge." Has any answer been sent to that communication?—The Treasury have been in communication with both the Bank of England and the Bank of Ireland upon this subject, with a view to giving effect to the suggestion of the Comptroller and Auditor General. No answer has been returned. The communications have been of an unofficial character, in order to arrive at an agreement upon the nature of the information to be given, before it is embodied in the form of correspondence.

Lord Eslington.

651. Is there any obligation at present existing upon these banks to furnish an account of these balances?—No. An arrangement has been come to between the Treasury and the Audit Office as to the nature of the Audit to be applied to the Issues for the debt, and up to the present time no account of this kind has been asked for. There is no question about the propriety of such an account being given, and it will be given.

652. Then I understand you to think it highly desirable that these Accounts should be rendered?—The Treasury and the Comptroller and Auditor General are quite agreed on the subject.

653. Do the Banks raise any objection?—No.

Chairman.

654. You are in communication with them as to the best form of the Account?—Yes.

Colonel Stanley.

655. Is it a question of form, not of principle?—Quite so.

Mr. Seely.

656. There is an item here of "Interest on Suez Canal Bonds;" will the Accounts in future show how that Account stands from year to year?—Certainly; a form of account has been drawn up which is to be laid year by year before Parliament, showing the receipts from Egypt, and the payments made under the Act which enabled the loan to be made.

Chairman.

657. It is stated in the 5th paragraph of the Report of the Comptroller and Auditor General, that "No repayment of either principal or interest in respect of these advances has been made during the year 1876-77;" do you know what was the cause of that?—I have been in communication with the Admiralty on the subject of these loans, and I am informed that on one of the loans which has been made under the Act in question, an instalment by way of principal and interest is in arrear; but it only became due on the 25th of October, and it is quite probable that it was some little time after October before the accounts were made up. There is no doubt that at the present moment that loan is in arrear, although not to any great extent. I am not able to understand from the account I have received from the Admiralty, that there is any arrear on the other loan, there being only two loans under the Act.

658. Only two loans have been made?—Yes.

659. Were there no repayments made upon them in the year 1876-77?—The Admiralty state to me that the payments upon the other loan have been made now, and possibly a sum may have been received before the 31st of March of last year.

Lord Eslington.

660. Does the sum of 32,000 *l.*, to which the remark of the Comptroller and Auditor General refers, represent this particular loan and this particular loan only?—Only two loans have been made under the Act: one of 20,000 *l.*, was made to the Anglo-Maltese Dock Company; and the other, of 12,000 *l.*, to a dock company at Hong Kong. The Memorandum given to me by the Admiralty, states that there is no arrear on account of the loan to the Hong Kong Dock Company. I ought to say that that account is given up to the present time, and that this Account upon which the Comptroller and Auditor General has reported, was up to the 31st of March 1877; therefore the arrears may have been cleared off in the meantime. Upon the other loan, namely, that to the Anglo-Maltese Dock Company, a sum became due on the 25th of October last, which up to the present time has not been paid, and that is the amount of arrear now.

Chairman.

661. That is up to the present moment?—Yes.

662. Perhaps you can ascertain before the next meeting of the Committee whether there were arrears at the close of the year under consideration

CONSOLIDATED FUND ACCOUNT—*continued.**Chairman—continued.*

sideration which have since been paid?—I will do so.

663. In paragraph 8 it is stated that the issues for the Sinking Fund, "292,706 *l.* 14 *s.* 7 *d.*", was applied in the purchase of Stock up to the 31st March 1877, leaving a balance for further purchases of 338,980 *l.* 6 *s.* 7 *d.*" I believe that under the Sinking Fund Act there is a margin of time allowed for the purchases of Stock to be made out of the Sinking Fund?—The Treasury is only obliged to issue the Permanent Charge of Debt, which includes the Sinking Fund, amounting to 8,000,000 *l.*, within the financial year. The Sinking Fund is issued to the National Debt Commissioners for investment, and there are six months allowed to the National Debt Commissioners for the investment of the money paid over to them.

*Mr. Seely.*

664. (To *Mr. Ryan.*) I think the point which the Comptroller and Auditor General puts in the 9th paragraph of his letter B., on page 8, is as to whether his Department is to ascertain that the legal documents are correct with regard to the advances of money there referred to?—In that paragraph the question is put to the Treasury whether or not the Comptroller and Auditor General should make any examination of the securities upon which those loans were passed by the Public Works Loans Commissioners. Under the provisions of the Public Works Loans Act the Treasury are to give directions with reference to the examination to be given to this Account, consequently, upon the completion of the first year's examination, the Comptroller and Auditor General brought before the Treasury in this letter the several points which had occurred, and he asked them whether they were of opinion that he should or should not undertake any examination of the securities. He thought it best to begin by doing the work, and asking them for more specific directions afterwards. He informed them that in the Audit, as he had conducted it, he had not made any examination of securities, considering that the legal officers of the Department should be the persons responsible for those documents. At the same time he brought the point under their consideration for any directions they might think fit to give upon it, and to relieve himself from any responsibility upon the matter.

665. (To *Mr. Welby.*) What do you say to that?—The Treasury have not come to a decision upon the points raised by the Comptroller and Auditor General as yet. They feel some difficulty in connection with the matter, because while it may be very desirable that the Comptroller and Auditor General shall satisfy himself of the existence of the securities in question, it is very doubtful whether it would be desirable that the Comptroller and Auditor General, who has no legal staff attached to him, should take any responsibility as to the sufficiency of the securities prepared by the legal officers of the Public Works Loan Department.

666. (To *Mr. Ryan.*) I believe the Local Government Board see that the money has been applied according to the provisions of the Act?—The Treasury, in their letter giving the Comptroller and Auditor General directions with regard to the

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CONSOLIDATED FUND ACCOUNT—*continued.**Mr. Seely—continued.*

examination of this Account, made special reference to the 36th section of the Public Works Loans Act, which relates to the duties of the Local Government Board as to satisfying themselves that the loans have been applied to the purposes to which they should be applied, and that the works have been carried out as they should have been. The Comptroller and Auditor General therefore felt that a certain amount of responsibility lay upon him with reference to ascertaining that this had been done, and that he might possibly not be doing all that the Treasury had intended if he did not take some notice of that matter, and ask for some means of being satisfied that the work had been done to the satisfaction of the Local Government Board. He consequently wrote to the Local Government Board the letter which you will find appended to this Account. The Local Government Board, in reply, practically, told him that it was no business of his; he thereupon, as in duty bound, referred the matter to the Treasury, and has received no answer from them.

667. (To *Mr. Welby.*) What do you say to that?—As I mentioned just now, the Treasury have doubts as to the extent to which the Comptroller and Auditor General should undertake the examination of the securities, and thereby make himself responsible for the sufficiency of the security in each case, and upon that point they have not yet come to a decision. Furthermore, upon the question of the control exercised by the Local Government Board, they have been in communication with the Local Government Board with a view to ascertain whether it might be desirable to introduce a clause giving the Local Government Board further power than they have at present, in following out the expenditure of monies advanced by the Public Works Loans Commissioners. Both those questions are under the consideration of the Treasury, and up to the present time no definite decision has been pronounced upon them.

668. Is it likely that any decision will be come to shortly?—Yes, I think that a decision will very shortly be come to upon the subject of the emendation of the law, and at the same time I see no reason why the Treasury should not arrive at a decision as to the extent of the examination of securities which the Comptroller and Auditor General should exercise.

669. (To *Mr. Ryan.*) I think there was another question raised by the Comptroller and Auditor General, as to whether the parties who wished to borrow the money have proper security to give for it; would that question be involved in the former one?—I think it would fall within the question raised in paragraph 9.

670. As to proper security being given?—Yes.

*Lord Eslington.*

671. (To *Mr. Welby.*) This matter of the examination of securities strikes me as a very important one; supposing the Comptroller and Auditor General to claim the right of examining these securities, would there not be a very great danger of his coming in conflict with, and possibly in antagonism to, the very highest functions which Parliament requires the Public Works Loans Commissioners to perform: namely, to ascertain

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*Mr. Welby, C.B.,  
and Mr. Ryan.*

13 March 1878.

Mr. Welby, C.B.,  
and Mr. Ryan.

13 March 1878.

CONSOLIDATED FUND ACCOUNT—*continued.*

Lord Estington—*continued.*

ascertain whether the securities are sufficient in respect of each loan that is applied for?—I think the chief objection to the Comptroller and Auditor General's examining the securities is, that he has no legal staff attached to him which gives him any facility for so doing, and it would be a somewhat new function to entrust to him to make him in any way responsible for the sufficiency of a legal document of that character.

672. It would simply amount, as I look at it, to a transfer of the responsibility for the performance of this very important duty from the shoulders of the Public Works Loans Commissioners to those of the Comptroller and Auditor General; at all events, might it not amount to that?—I think that is one of the objections to which the suggestion is open; but I should add that the Treasury do not understand that the Comptroller and Auditor General desires to have that control entrusted to him; he merely raises the point in order that the Treasury may be aware of the fact that he does not examine the securities.

673. (To Mr. Ryan.) Is that the object of the Comptroller and Auditor General?—Paragraph 9 is as follows: "There has been no examination of the securities, and the Comptroller and Auditor General would be glad to learn whether their Lordships are of opinion that some inspection or verification of the fact that deeds have been duly prepared should be undertaken by this Department, or whether this Department having ascertained that the loans are of the nature prescribed by the Public Works Loans Acts, and also that the parties borrowing have power to raise money under their several Acts, may assume the proper preparation of documents of a legal nature by the Solicitor of the Public Works Loans Commissioners." There was no intention whatever in this paragraph, or in any part of the letter, to claim any power of revising legal documents on behalf of the Comptroller and Auditor General. It merely stated that having conducted the examination, the Comptroller and Auditor General informed the Treasury of the examination that he had conducted, and called their attention to any points which arose in connection with it, in order that his responsibility might be defined, as well as an account be given of the duties which he had discharged.

Colonel Stanley.

674. Is it not clear from that paragraph that the Comptroller and Auditor General thought himself bound to raise the question, but did not express an opinion upon it?—The opinion intended to be expressed was rather that there was no necessity that he should undertake this work.

Chairman.

675. (To Mr. Welby.) The Comptroller and Auditor General states that, "in the present letter he proposes to confine himself to stating what has been the nature of the examination given to the account, in order that their Lordships may be able to form an opinion whether the examination as given supplies such a sufficiently reasonable audit as to give effect to the intentions of the Act"; can you inform the Committee whether the Treasury thinks that the Audit is, generally speaking, sufficient?—They are satisfied that it is so.

CONSOLIDATED FUND ACCOUNT—*continued.*

Chairman—*continued.*

676. At the conclusion of the letter, the Comptroller and Auditor General states, "that he would be glad to learn that their Lordships concurred with him in the opinion that arrangements should be speedily made for similar accounts of the various other loans granted out of public money being rendered and examined"; what is the opinion of the Treasury upon that point?—The opinion of the Treasury is, that the Comptroller and Auditor General should be furnished with sufficient information upon every loan or class of loan to enable him to report to Parliament whether the loan is in arrear or not, and whether the conditions of the loan have been duly observed or not.

677. I presume it is intended that the necessary accounts should be furnished with respect to the West India Islands Relief Commissioners' Account?—Certainly. Perhaps I may mention to the Committee that the work which the Treasury have undertaken with regard to these loans has involved a very considerable amount of labour. The accounts of the loans in arrear have not really been examined to any effect for a very long period, and the clearing up of doubtful cases, extending over very many years, will probably entail upon them a very large amount of correspondence and labour. The consequence is that considerable time has been taken up. At the present time two Acts have been passed, which have cleared off a considerable amount, and of course the Treasury have felt bound in no case to suggest the remission or composition of a loan until they were thoroughly satisfied that there were no probable means of recovering the amount due. The Treasury have now the West India Islands Relief Account under their consideration, and have been in communication with the West India Islands Relief Commissioners upon one branch of these loans; they have instructed them to offer certain terms to a number of debtors, and they have also directed them to take proceedings against those who either refused or did not offer terms, and they hope within a short time by this means to have cleared up that branch of these loans. It is then proposed to take each of the remaining parts of these West India loans in the same manner. A difficulty arises in the case of these loans in this way: they were advanced in most instances to individuals, and the consequence is that the security consists of small separate estates, upon each of which a report has to be received; as soon as each of those branches of the inquiry is finished, the assent of Parliament will be asked to any remission of loans that may be thought necessary, and, at the same time, the papers will be furnished to the Comptroller and Auditor General to enable him to report.

678. But until those questions have been decided you do not consider that it would be practicable or advisable to furnish an account showing the amount in arrear?—Every year there is an account given in the Finance Accounts, showing how these loans stand.

679. Including the amount in arrear?—Yes, and the Committee may remember that a rather exhaustive Return was presented by the Chancellor of the Exchequer about two years ago of public loans, which really was the beginning of these extended inquiries. That Return includes all the details of these West India loans.

680. (To

CONSOLIDATED FUND ACCOUNT—*continued.**Chairman—continued.*

680. (To Mr. Ryan.) Would not that account enable the Comptroller and Auditor General to ascertain what sums are owing?—The Comptroller and Auditor General has to take that account upon its own showing; it is not furnished to him for any examination.

681. But if that account were furnished to him would it supply the Comptroller and Auditor General with sufficient information?—I am not able to answer that question without knowing what account could be furnished of the West India Islands Relief Commissioners' Loans. At the present time a statement is presented to Parliament in the Finance Accounts, but that is one thing, and an account furnished to the Comptroller and Auditor General for his examination is another. In the tenth paragraph of the Report allusion is made to the latter.

682. (To Mr. Welby.) Do the same observations apply with respect to the loans for drainage of lands accounts?—I think, with regard to the drainage of lands accounts, there will be no difficulty whatever in making arrangements whereby the Comptroller and Auditor General will be able to report to Parliament the progress of the repayment of those loans.

683. The sums due and the sums paid?—The sums due and the sums paid. In fact, the Treasury propose upon this paragraph of the Comptroller and Auditor General to endeavour to make the arrangement without delay.

CONSOLIDATED FUND ACCOUNT—*continued.**Chairman—continued.*

684. Passing to paragraph 12, it appears that by section 15 of the Act 40 & 41 Vict. c. 27, "the Treasury may from time to time direct" that accounts "shall be kept by the Commissioners of Public Works or other persons, and be audited by the Comptroller and Auditor General in such manner as the Treasury may direct." Have the Treasury given any direction upon the subject yet?—Up to the present time they have not given directions as to the nature of the accounts to be furnished. The accounts of the Public Works Commissioners in Ireland differ in some respects from those of the Public Works Loans Commissioners in England, The Public Works Loans Commissioners in England simply lend money, whereas in many cases the Public Works Loans Commissioners in Ireland not only lend money but are charged with the execution of works; the consequence is, that the accounts to be rendered by them would not be so simple as those of the Public Works Loans Commissioners in England, and the Treasury have under their consideration the question as to what would be the most convenient form of rendering those accounts to the Comptroller and Auditor General.

685. But they intend, with as little delay as may be, to direct that accounts shall be furnished?—The Act puts that duty upon them.

686. It says, "The Treasury may direct"?—The Treasury take that as a direction to them.

Mr. Welby, C.B.,  
and Mr. Ryan.

13 March 1878.

## WOODS, FORESTS, AND LAND REVENUES ACCOUNT.

687. No question arises upon this Account?—No.



*Wednesday, 10th April 1878.*

MEMBERS PRESENT :

Lord Frederick Cavendish.  
Sir Walter Barttelot.  
Mr. Cubitt.  
Mr. Goldney.

Mr. Thomson Hankey.  
Sir Henry Selwin-Ibbetson.  
Sir John Lubbock.  
Mr. Seely.

LORD FREDERICK CAVENDISH IN THE CHAIR.

Mr. REGINALD EARLE WELBY, C.B., and Mr. CHARLES LISTER RYAN, called in ;  
and further Examined.

CHELSEA HOSPITAL ACCOUNT.

Major General GEORGE HUTT, called in ; and Examined.

*Chairman.*

Mr. Welby, C.B.,  
Mr. Ryan, and  
Major Gen. Hutt.

10 April 1878.

688. ARE you the Accounting Officer for the Chelsea Hospital Vote?—I am.

689. I believe this is the first Account upon which there has been any Report by the Comptroller and Auditor General?—It is.

690. I believe there are certain general remarks which you wish to make with respect to it?—Yes; with your permission, I wish to make a few general remarks. First of all, I may be permitted to observe that Chelsea Hospital has never cost the State a penny; it was built and maintained entirely by subscriptions from the Army, and were it not that very large sums of money have been alienated for other purposes, it would now be absolutely independent. As it is, we are obliged to go to Parliament for maintenance, but the sums voted for maintenance include nothing else; they simply provide the ordinary rations for the men, and meet the expenses of keeping the buildings in order. The Committee will readily understand that where there are 550 old men there are numerous petty requirements, which it would be almost impossible to define, connected with their comforts and conveniences, and it is to meet these that these funds are applied, and very economically and carefully they have been applied. I should mention that the board, which consists of 15 members, all of them people of position and of rank and of experience, seven of them being Members of Parliament, administer the affairs of the hospital immediately and directly. They meet every week, and administer all the affairs themselves directly, and two of them being always on the spot, they have the best possible means and opportunity of seeing with their own eyes, and of knowing and judging for themselves what is required. No sum of money has ever on any occasion been paid except with the sanction of a quorum of the board, the Paymaster General being himself present, or, in his absence, giving his sanction in writing. The economy which has resulted in many instances is, I think,

*Chairman—continued.*

deserving of mention. For example, some years ago the grounds and walks were kept by the Office of Works at a charge of 1,600*l.* odd; when the Commissioners of Chelsea Hospital took it in hand themselves they reduced the expense by 700*l.* a year, and did the thing infinitely better. I do not know whether I may be permitted to mention what I think I have observed during many years of experience that I have had there, namely, that whenever anything is required which it is left at all to the discretion of subordinates to provide, there is always a disposition to enhance the cost. I may mention, as an instance of that, a fact which stands upon the records of the hospital. Some few years ago, before I was there, a sum of between 300*l.* and 400*l.* was paid for gravel, that self-same work was accomplished this year in great part for not as many shillings, the simple explanation being that the gravel was lying under their feet, only they had no interest in looking for it. I could go on giving endless instances to show the good economy which results in every case from the persons who have the management being on the spot and seeing to it themselves, sanctioning and reviewing the disbursements. It was suggested some time ago, in the first instance with regard to these funds, that the Charity Commissioners should organise a scheme.

691. I believe that particular point is dealt with in the Report of the Comptroller and Auditor General?—Yes.

692. On page 5 of that Report the Comptroller and Auditor General points out that the expenditure incurred for the erection of an iron fence surrounding the Chillianwallah Monument was defrayed from the Drouly Fund?—That was so.

693. That monument, I believe, was erected by subscription?—Yes, it was.

694. Considering the nature of the trust, do you think that the funds of this legacy were properly applicable to such a purpose?—The matter

## CHELSEA HOSPITAL ACCOUNT—continued.

*Chairman*—continued.

matter was very carefully considered by the board at the time. The funds which were subscribed by the officers who erected the monument were not sufficient to complete the monument and to put a fence round it, and, had no fence been put round it, it was liable to be damaged. The board considered it a very characteristic and proper memorial for such a place, and they thought that, as it was handed over to them, they were bound to take care of it, and therefore they considered that the cost of a light fence such as they put up was very properly chargeable to this fund.

695. The fund was especially directed to be applied to the use and benefit of the pensioners, was it not?—Yes, but nothing contributes more to the comfort of the pensioners than the use of these grounds, and this monument was apt to be very much injured and dirtied by careless boys playing round it.

696. It is in the grounds attached to the hospital?—Yes, in the grounds belonging to the hospital.

697. With respect to the concluding paragraph of the Report, the Comptroller and Auditor General states that he infers "that the Commissioners feel themselves, to a certain extent, at a loss to decide with reference to the application" of the Legacy Funds; is that the case?—Not at all. The application is exceedingly simple; what the Commissioners wish to do, if it were considered perfectly correct, is simply, according to the words of the Act of Parliament with reference to the Prize Fund, to apply them to the general benefit or the general purposes of the hospital.

698. But this remark applies to the Legacy Funds?—Yes, the Commissioners wish to apply the Legacy Fund to the general purposes of the hospital. Circumstances change cases, and from the length of the period which has elapsed since some of the bequests were made, it would be difficult to apply them quite strictly in some cases according to the letter, though not to the spirit, of the bequest.

699. If it is impossible to apply them strictly according to the nature of the bequest, might it not be well to obtain the opinion of the Charity Commissioners upon the point, so that a more elastic application might be sanctioned?—The board considered that they were themselves far better judges than anybody else, and could secure a better application of the funds than anybody else could.

700. They considered that they had power to make an elastic application?—Yes; they always considered that, under the Patent, they were perfectly empowered to deal with these funds.

701. (To Mr. *Ryan*.) Have you anything to say upon this point?—The Comptroller and Auditor General simply thought it his duty to suggest this matter for consideration. It is rather an administrative question; but if he is to examine these Accounts with reference to the authorities, he would look rather for a strict application of the money according to the legacies. Where that is impossible, it would seem to him to be a question whether, as there is a constituted body for diverting the use of legacies from one purpose to another when they have become obsolete, this was not a case in which the Commissioners should

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## CHELSEA HOSPITAL ACCOUNT—continued.

*Chairman*—continued.

take the advice of that body rather than do it on their own authority.

*Sir Walter Barttelot.*

702. How far would you recommend the intervention of the Charity Commissioners to go with regard to these funds?—That is entirely a matter for the Charity Commissioners. The Comptroller and Auditor General only thought that if the Chelsea Commissioners are unable to apply the money strictly according to the legacies, and that is admitted, they should thereupon concert with the Charity Commissioners such a scheme as would give them the authority which seems now to be wanting.

703. Would you apply that to every legacy of every kind which has been left to Chelsea Hospital?—To every legacy which has been left to Chelsea Hospital, specifically directed to be applied to certain purposes, those purposes being now in some cases obsolete.

704. Then your only idea is that they should give their sanction to expenditure of money in a certain way, not that they should interfere with the rights of the Board of Commissioners of Chelsea Hospital?—Clearly not. If the Commissioners of Chelsea Hospital are unable to apply the money to the purpose for which it was originally left, the Comptroller and Auditor General thinks that they should in those cases obtain the proper sanction to its diversion to another purpose.

705. (To Major General *Hutt*.) Have you any remark to make upon that?—The Chelsea Commissioners have for 200 years never considered that there was any difficulty on the subject. They have most carefully husbanded these funds, and applied them to the general use and benefit of the in-pensioners and no otherwise.

*Chairman.*

706. When you speak of their practice for 200 years, that cannot apply to the Drouly Legacy Fund in particular, because that bequest appears to have been only made in 1818?—Yes; but the Ranelagh and De La Fontaine Legacies are much older; they go back to the beginning of the last century.

*Sir H. Selwin-Ibbetson.*

707. I suppose, under the Drouly Legacy, the Commissioners of Chelsea Hospital considered that they had power to direct the expenditure of the money to any purpose as long as they were satisfied that it was for the use and benefit of the pensioners?—Yes.

708. Under the special words of the will which passed the money to the hospital?—Yes, that is the course which has always been adopted. Whenever any expenditure is required, it comes to my office, and it is my duty to see that it is perfectly consonant with the practice of the hospital, and then lay it before the board, and when it receives the sanction of a quorum of the board, the Paymaster General himself being present, that is my authority for disbursing the money.

*Chairman.*

709. (To Mr. *Welby*.) In paragraph 13 of his Report, the Comptroller and Auditor General calls attention to the fact that the expenditure upon the hospital is defrayed from various sources.

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I presume

Mr. *Welby*, C.S.,  
Mr. *Ryan*, and  
Major Gen. *Hutt*.

10 April 1878.



Mr. Welby, C.B.,  
Mr. Ryan, and  
Major Gen. Hutt.

CHelsea HOSPITAL ACCOUNT—continued.

10 April 1878.

Chairman—continued.

I presume that the fact of a contribution being taken from the Legacy Funds to meet this expenditure is a matter which will have to be taken into consideration in dealing with the general question of extra receipts?—It is a new question to be brought to the attention of the Treasury, and I am hardly able at the present moment to say whether a receipt of that kind would fall within the purview of the inquiry which is now progressing or not. The receipt from the Legacy Funds in this case is a very peculiar receipt; it is, no doubt, an extra receipt taken in aid of the expenditure of the hospital, and I think it very probable that it will be necessary for the Committee who are now inquiring into the question of extra receipts not to lose sight of the fact that the attention of Parliament has been called to this receipt.

710. Until this note was appended to the Account it would have been impossible for Parliament, or, at all events, very difficult for Parliament, to ascertain the entire cost of Chelsea Hospital, would it not?—I think so.

711. Is it not desirable that the Estimates and the Accounts should be framed in such a manner that such total expenditure should be shown?—It is desirable that Parliament should be in a position to know what the entire cost of any public institution or public department is.

Mr. Seely.

712. (To Major General Hutt.) The amount voted by Parliament for last year for Chelsea Hospital appears to have been 34,529*l.* 0*s.* 5*d.*?—Yes.

713. And the amount received from these legacies was 3,032*l.* 0*s.* 7*d.*?—Yes.

714. The Comptroller and Auditor General starts a question whether, considering the small amount which is obtained from the Army Prize Fund and the Legacy Fund, and the comparatively large amount which is obtained from the nation by the Votes of Parliament, it would not be desirable that the whole of the expenditure should be defrayed out of Votes of Parliament, and that the revenue arising from the Army Prize Fund should be paid into the Exchequer as an extra receipt?—Yes.

715. He observes that by so doing a better check upon the expenditure would be obtained?—I do not think nearly so good a check would be obtained, for nothing can be more carefully managed than the expenditure is at present, for it is gone into by people who have their own interests in view; they see to it, and know all about it themselves.

716. There may be a difference of opinion upon points respecting it?—Certainly.

717. Parliament in its wisdom has appointed the Comptroller and Auditor General to see that the votes which Parliament grants are appropriated in the way it desires?—Undoubtedly.

718. Therefore what you state may be all correct, but it is merely a matter of opinion, and not a matter of fact?—Certainly, that is so; but it is an opinion founded on many years of minute practical experience; and I mean to say that these funds exactly meet those numerous little petty requirements, which it would be very difficult to state, and which I am quite certain are met in that way in a more

CHelsea HOSPITAL ACCOUNT—continued.

Mr. Seely—continued.

economical and efficient manner than they could be provided for by any other means.

719. Then, I suppose, the Commissioners think that it would be desirable to retain the sum of 3,000*l.* and upwards, which they can spend as they like without the control of Parliament?—There are seven Members of Parliament who are members of that body.

720. But without the control of Parliament?—There is a strict account rendered of it all, and the Commissioners were strongly of opinion, when it was put before them, that it was not desirable for the general benefit of the hospital that these accounts should be interfered with.

721. The Comptroller and Auditor General observes in his Report that as the accounts are kept at present a difficulty arises in deciding upon the head of Revenue to which certain expenditure should be charged?—We have never found that. It is very clearly defined, I believe. The Parliamentary Votes are simply for food and raiment, rations and clothing, nothing else whatever; everything else is done by the Commissioners from these funds in their hands.

Chairman.

722. I believe there is some other point to which you wish to call the attention of the Committee?—Yes. The buildings properly speaking have always been paid for by the hospital, but their maintenance has been met by Votes of Parliament, because the funds which should have been applied to the maintenance have been diverted. No new building has ever been constructed except at the expense of the hospital. There are some new little buildings now required which are likely to cost about 1,500*l.*, but the Commissioners did not like to expend that money until this question should have been decided.

Sir John Lubbock.

723. I see you have not spent the interest upon the Stuart Legacy?—No, that money has been purposely held over to meet those expenses of which I have been speaking. At this moment the Thames Embankment involves the necessity of building a lodge, and there is also a very obsolete and ill-constructed coal yard where a new building is required. Those two together will cost between 1,500*l.* and 2,000*l.*; it was to meet this expenditure that the Commissioners reserved that money.

724. Was the money specially left for new buildings?—No, the Stuart Legacy was for the general purposes of the hospital, but it was not immediately required at the time, and the board directed that it should be allowed to lie over to meet any of those extraordinary demands.

725. I see that there is a sum of 1,175*l.* 15*s.* 5*d.* expended out of the Civil Service Vote, Class I., Vote 3, for works and repairs of the building?—Yes, that was for repairs and maintenance of the building and furniture, but not for any new buildings.

726. I understand that this Stuart Legacy Fund was not left for new buildings, but for the general maintenance of the hospital?—It was so, for the general purposes of the hospital, such as I have described.

727. Then I do not understand why it was not applied to the general maintenance of the hospital?

CHelsea HOSPITAL ACCOUNT—continued

Sir John Lubbock—continued.

hospital?—It was not immediately required for that purpose, and the board some years ago ordered it to lie over.

728. It may not have been required for that purpose, but a sum was required for that purpose because it was voted by Parliament. I do not quite understand why you did not apply this money which you had in hand under the Stuart bequest, instead of coming to Parliament for a Vote for the maintenance of the hospital?—I draw a distinction between new buildings and the maintenance of old ones; the ordinary maintenance of the men, and all those extra expenses to which these funds are applied.

729. But I understand you to say that this fund was not left for new buildings, but for the general purposes of the hospital?—Yes.

730. Then what I do not understand is, why it was not applied to the general purposes of the hospital, and why you had a Vote of more than 30,000*l.* from Parliament for the general purposes of the hospital, having all the time in your hands a fund which had been left for the general purposes of the hospital?—These funds have always been devoted to the immediate comforts and requirements of the old men in the hospital apart from general maintenance, such, for instance, as the library, reading-room and smoking-room, tools for their gardens, a certain allowance of tobacco, extra rations on holidays, games, amusements and entertainments, besides meeting various demands from the surgeon and others for the immediate wants of the men.

731. But you do not propose to apply this fund to any of those purposes?—No; as I have stated, the Commissioners propose to apply it to new buildings. There is a new lodge requiring

CHelsea HOSPITAL ACCOUNT—continued.

Sir John Lubbock—continued.

to be built, and they propose to apply it to that purpose, so as not to have to go to Parliament for a Vote for a new building, a thing which has never been done before. The intention of the Commissioners was not to apply to Parliament for any Vote for new buildings.

732. But, under the Stuart bequest, the money was not left specifically for new buildings, but for the general maintenance of the hospital?—Yes. In the last few years very large additions have been made to the hospital from its own funds; 7,000 *l.* have been expended in enlarging the infirmary, and 2,000 *l.* were expended a few years ago in furnishing hydrants and laying on water as a security against fire.

Sir H. Selwin-Ibbetson.

733. If I understand you rightly, the Stuart Legacy was left to the hospital without any specific conditions as to its expenditure?—I am not certain about that, but I will make inquiry and ascertain it. I find that I have the particulars of the bequest here: "John Stuart, of Lancashire, gentleman, made a will, by which, after certain other bequests, he directed his executors to pay the personal residue to the treasurer or paymaster for the time being of Chelsea Hospital, to be applied to the general purposes of such hospital."

734. And you have interpreted the words "general purposes" in the same spirit that you have interpreted the words of the Drouly Legacy, "for the use and benefit of the pensioners"?—Yes, that is the fact.

735. Without thinking it necessary to apply the sum directly to the annual expenditure?—Exactly so.

[Major General Hutt withdrew.]

Mr. Welby, C.B.,  
Mr. Ryan, and  
Major Gen. Hutt.

10 April 1878.

ARMY APPROPRIATION ACCOUNT.

Mr. JOHN MILTON, C.B., called in; and Examined.

On Paragraph 4 of the Report.

Chairman.

736. (To Mr. Milton.) ARE you able to inform the Committee when accommodation is likely to be available at Winchester House for the officers of the Comptroller and Auditor General?—I consulted the Assistant Under Secretary of State when I received this report, and he informed me that the contract is that it shall be completed next month, that is in May, but that it was impossible to say within a few weeks when the building would be so thoroughly finished and equipped, that the assistants of the Comptroller and Auditor General could go into it. The contract is distinctly for May.

737. Do you know what has been the cause of the delay, because in May of last year we were informed that the accommodation would be provided within two or three, or at most six months?—I do not know.

738. (To Mr. Welby.) I think you informed the Committee last year on behalf of some department, that the accommodation in Winchester House would be ready at the latest in six months

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Chairman—continued.

time from May; do you know what has been the cause of the delay?—That statement was made upon the information which I was able to obtain from the department at the time, and I do not know what the reason of the delay has been.

Mr. Goldney.

739. With what department was the delay?—It would be with the Office of Works.

740. Who puts the Office of Works in motion, the War Office or the Comptroller and Auditor General?—Upon the purchase of the building the Treasury would doubtless put the Office of Works in motion, but of course the carrying out of the works would be under the superintendence of the Office of Works, in consultation with the War Office alone.

741. Then it is the business of the War Office to put them in motion?—Of course the alterations would be carried out in consultation with the War Office.

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742. (To

Mr. Milton, C.B.

## ARMY APPROPRIATION ACCOUNT.

## On Paragraph 5.

*Chairman.*

742. (To Mr. Milton.) The Treasury minute upon the Report of the Public Accounts Committee last year runs thus: "As regards the extended audit of Army Accounts, I am to request that the attention of the Secretary of State may be drawn to the recommendation made by the Committee in paragraph 98, that the consolidation of the Royal Warrants, regulating pay and allowances, should be completed as soon as possible, and that all standing authorities for expenditure should be codified. Their Lordships would have thought that such a work, had it not been allowed to fall into arrear after the codification of 1870, might have been maintained without any extra expense. They are prepared, however, to sanction such outlay as may be shown to be necessary for the purposes, upon an estimate of it being submitted to them." Are any steps being taken in consequence of the minute?—Yes, considerable progress has been made in those codes. The Army Circular which I hold in my hand dated the 1st of this month (April), contains no less than eight separate warrants, each dealing with one or another of those matters, allowances at home, allowances abroad, and so on.

743. The matter has been proceeded with as rapidly as practicable?—Quite so.

## On Paragraph 6.

744. Has the Inter-departmental Committee, with respect to the Regimental Debts Act and the Soldiers' Effects, yet been appointed?—Yes, it has sat, and reported within the last few days to the Secretary of State for War.

745. Then that question also will probably be settled before long?—As soon as the decision of the Secretary of State is given.

## On Paragraphs 7, 8, 9, 10, and 11.

746. With respect to the contingent allowances for yeomanry cavalry, as I understand the matter, these allowances are paid annually; but as the expenditure necessarily varies from year to year, the colonels of yeomanry are allowed to accumulate the money to meet exceptional payments?—That is so. The allowance is a sum annually for each efficient yeoman; the expenditure is on all the various requirements of the regiment, including their equipment and clothing. Some of those articles last a year, some four years, and some ten years; it was therefore impossible to call upon the regiment to render an account for each year, because the very character of the expenditure required that the money should be funded, and that payments should be made from that fund as the expenditure was incurred for the various articles. I am instructed by the Secretary of State to inform you that that matter was considered very fully by the yeomanry committee of last year, of which he was the chairman, and that they convinced themselves that any attempt to render it an annual issue with an annual account would be attended with greatly increased expense to the public.

747. But the Comptroller and Auditor General points out that recently two cases have occurred in which it appears possible that a loss may be incurred by the public. For instance, he states

## ARMY APPROPRIATION ACCOUNT.

On Paragraphs 7, 8, 9, 10, and 11—*continued.**Chairman—continued.*

that, "In the first, a regiment having been disbanded, a sum of about 200 £. has been ascertained to be due to the Exchequer," and "in the second, a sum of 6,856 £., issued and charged to the Vote, was found not to have been expended, and is now being refunded by the late commanding officer by half-yearly instalments of 500 £." Will the present regulation prevent such occurrences happening again?—I should hope so; the present regulation, without requiring an annual account, and a balancing of that account, brings the expenditure much more under the review of the Secretary of State, chiefly with the object, in the first place, of observing upon that expenditure if the items disbursed should appear to be improper; and with the object, in the second place, of enabling us after having observed upon them, if they are not altered, to object to them. But I do not exactly see how the Exchequer can have lost, inasmuch as the issue is a final one; it is not subject to account.

748. But an officer to whom these sums are paid is not allowed to use them for his own purposes, is he?—No. The fund is a regimental fund; if the regiment is kept in due efficiency, we have not inquired from year to year what balance is in hand. When an officer gives up the command of a regiment, he is bound to account to his successor for the balance, and that occurred in the case of the large sum mentioned in the Report.

749. Taking this sum of 6,856 £., I understand you to say that it would not be payable to the Exchequer, but would be transferred to the officer succeeding to the command of the regiment?—Certainly; and that was the case in the instance alluded to here, for the officer who took the command found that the regiment was very deficient in its due equipment, and he has been spending exceptionally large sums since he took the command, which will come out of that 6,856 £. balance.

750. (To Mr. Welby.) In the view of the Treasury, can these allowances be considered as final charges?—The view of the Treasury is that, even if these allowances are final charges, they are final charges for a certain purpose; and, if so, it would be necessary that the Comptroller and Auditor General should be able to satisfy himself that the money issued was spent for that purpose for which it was intended. The Treasury gather from the Report of the Comptroller and Auditor General that he has ascertained that in certain cases there were sums repayable to the Exchequer. If that is the case, it is certainly desirable that he should have the means of ascertaining that the money has been devoted finally to the purpose for which it was originally intended. That being so, the view of the Treasury would be that the departments concerned should consider together whether a means cannot be found of arriving at an understanding with the Comptroller and Auditor General whereby that power should be placed at his disposal in the manner most convenient to the War Office.

751. (To Mr. Milton.) I understand you to state that in no circumstances are these sums repayable to the Exchequer?—I am not aware of any

ARMY APPROPRIATION ACCOUNT.

On Paragraphs 7, 8, 9, 10, and 11—*continued.*

*Chairman*—*continued.*

any circumstances in which that could arise. I never heard of a final payment being allowed to go back again to the Exchequer.

*Sir W. Barttelot.*

752. These payments are absolutely made to the officer commanding these different yeomanry corps to keep his corps in a fit and efficient state?—Yes, and that being the case, unless the Comptroller and Auditor General is to judge of the efficiency of the corps, I do not see how he could get more information as to the proper application of the money.

753. It is an allowance made to the commanding officer instead of finding the various accoutrements which are necessary for these yeomanry corps?—Exactly so.

754. If the State found those various accoutrements and made no allowance, would it not, in your opinion, be very much more expensive to the State?—Certainly; and that was the opinion which I was ordered to convey as being the opinion arrived at by the Committee presided over by Colonel Stanley on the Yeomanry.

755. Is it not a matter of course that an officer having only a certain sum of money to equip those men with, would be far more careful and economical in the expenditure of it, than if he had the Government to fall back upon for the expenditure upon accoutrement?—I am afraid I must say that I think that is so. I may mention that where we are talking of shillings in the case of the Yeomanry, we are paying pounds and hundreds of pounds in the same way to the Volunteers. The money issued upon the Capitation Grant to the Volunteers, of which we never have an account, exceeds the issue to the Yeomanry as 20 to 1.

756. But there are a vast number more Volunteers than there are Yeomanry?—Yes, I am speaking of the aggregate amount, not of the expense per man.

*Chairman.*

757. The same system is pursued with respect to the voluntary forces?—It is.

758. Should you consider that if, when a regiment was disbanded, there was any balance standing upon this account it was a sum belonging to the commanding officer or a sum repayable to the Exchequer?—I should consider it repayable to the Exchequer on the regiment being finally disbanded. There are no heirs to a regiment; that is to say, the public is the heir to a regiment, but I do not remember an instance of a regiment being disbanded.

759. (To Mr. Ryan.) Have you any observation to make upon this subject?—I think as the Audit Office has understood this question, the money issued has not been an allowance simply; had it been simply an allowance of which no account was taken, we should not have raised this question. We raised the question in consequence of the terms of the Army Circular itself which you will find in paragraph 8 of the Report: "The contingent and clothing allowance issued to regiments of yeomanry cavalry is not the property of any individual, and is not to be applied to increase the income of any member of the regiment." If it was an allowance pure and simple,

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ARMY APPROPRIATION ACCOUNT.

On Paragraphs 7, 8, 9, 10, and 11—*continued.*

*Chairman*—*continued.*

these regulations would not have been needed. The sum would have been handed over, and no account taken of it, and no vouchers sent. Then the circular goes on to say, "A public account is to be kept at a bankers of the sums issued distinct from any private account, or from any regimental fund arising from private subscriptions, and that an annual certified statement of the sums received and expended," "supported by vouchers will be transmitted to the War Office before the 1st May following." Those regulations seem to show that this does not stand upon the footing of what is called an allowance, as that term is usually understood in the public service, which is, that a certain sum of money is given to a person to make the best use of it he can to meet the purpose for which it is given; no more is given to him and no less. Of this money, on the other hand, there is to be an account kept, and it is required that it shall be supported by vouchers; that being so, we thought that the Exchequer and Audit Departments Act required that the sum actually issued and shown to have been expended should be the sum charged against the War Office grants, and not the sum first advanced; if the form of it was changed, and if it was turned into an allowance, and no account was required of it, we should raise no further question.

760. Are those accounts which you have just mentioned examined by the Comptroller and Auditor General?—The Comptroller and Auditor General has not examined them in any great detail; it is one of the points which will come before us in the test audit.

761. But they are submitted to him for examination?—The detailed expenditure upon the yeomanry has not been examined by the Comptroller and Auditor General.

*Mr. Goldney.*

762. (To Mr. Milton.) Have these accounts actually been furnished pursuant to that circular?—Yes, I expect so.

763. I see that the date of the circular is 1876?—Yes, I believe they have been furnished without exception, not for the purpose of examining them as accounts, but for the purpose, as I observed just now, of enabling the Secretary of State to object to any class of expenditure which might appear to be foreign to the purpose for which the allowance is made.

764. I wanted to get at the actual fact whether up to the 31st of March 1877, those accounts were rendered?—I have no doubt they were, in every case.

*Chairman.*

765. (To Mr. Ryan.) My question was whether the annual certified statement of the sums received and expended on account of the fund up to the 31st of March in each year, supported by vouchers which is required to be transmitted to the War Office, has been submitted to the officers of your department?—No, it has not.

*Mr. Seely.*

766. (To Mr. Milton.) Have you that account in the War Office?—We have these reports.

767. I mean the account which the Chairman speaks

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On Paragraphs 7, 8, 9, 10, and 11—*continued.*

Mr. Seely—*continued.*

speaks of?—Yes, they are not what you commonly understand by accounts; they are statements of expenditure.

768. Why did you not submit them to the Comptroller and Auditor General?—Because they did not affect the Appropriation Account; they are statements to us that the money has been spent on proper objects, but the money is a final issue.

769. In fact you declined on that ground to let the Comptroller and Auditor General see them?—No, we never declined to let him or his officers see anything in our office; everything is open to the Comptroller and Auditor General. We render to him only accounts and vouchers properly belonging to the Appropriation Account, but he is at liberty to call for any account or sub-voucher that he pleases relating to any part of that account.

Mr. Goldney.

770. I gather that you consider the receipts by the officers for the gross sum which appears in the Appropriation Account a sufficient voucher to justify the charge to the Comptroller and Auditor General, and that it merely rests with you as a matter of Departmental Audit to see that the amount issued to the officers is as between those officers and the War Department properly expended according to your views?—Certainly the receipt of the officer on behalf of the regiment constitutes a proper charge; the other is simply a matter of discipline for us to see that the expenditure is not unreasonable in its character.

771. (To Mr. Ryan.) That is the question at issue between the Comptroller and Auditor General and the War Office, is it not?—Yes, the Comptroller and Auditor General understood this not to be a sum allowed to the officer without any account; that is to say, an allowance pure and simple, but a sum expended on behalf of the service for which only the amount actually shown to have been expended should be charged against the Vote.

Chairman.

772. (To Mr. Milton.) I understand you to say that the opinion of the War Office is that this is an annual allowance, subject only to repayment in case of the disbanding of the regiment?—Certainly.

773. (To Mr. Welby.) If that is the case, would it be the opinion of the Treasury that these should be considered final payments?—If it be decided that the sum is paid over once for all without any account, then distinctly it would not be necessary to go further; but if the Comptroller and Auditor General has ascertained that certain sums are repayable, I think it is a question which ought to be considered between the War Office and the Audit Office, probably with the assistance of the Treasury, what are the real conditions of the service, and whether there is any necessity for the Comptroller and Auditor General to interfere in any manner whatever. It appears to me, from the statements that have been made before the Committee, that there will be very little difficulty in arriving at an understanding between the Comptroller and Auditor

# ARMY APPROPRIATION ACCOUNT.

On Paragraphs 7, 8, 9, 10, and 11—*continued.*

Chairman—*continued.*

General and the War Office, and that the requirements of the Comptroller and Auditor General would not be such as the War Office would find it difficult to meet.

Sir Walter Barttelot.

774. (To Mr. Milton.) Are not the Life Guards and the Blues placed on somewhat the same footing in this respect?—I think they are; they have special allowances for their equipments; and in the same way the Foot Guards have a special allowance for their recruiting.

On Paragraph 12.

Chairman.

775. With respect to the payments made on account of the Intelligence Department, under what head is that expenditure charged?—It is estimated and charged under various heads. Part is charged to pay, part to travelling allowances, and so on, under the several Votes, care being taken not to exceed the total of 4,000 L unless there was a balance before unexpended. This was the case in the year 1875-76; we short-spent in that year 705 L. 15 s. 3 d.; we therefore felt entitled to charge 520 L. 17 s. 5 d. in excess of the 4,000 L. in the accounts of the following year, leaving a net gain to the public of 184 L. 17 s. 10 d. on the two years.

776. As the expenditure is charged under different Votes it would not be easy to bring it under a Sub-head as is suggested by the Comptroller and Auditor General?—I will bring that point to the notice of the Secretary of State. It was decided in the previous year by the Secretary of State himself that it was more correct to estimate it under its different head, and more in unison with the rest of the Estimates.

777. The question may be considered as being now under consideration at the War Office?—I will draw the attention of the Financial Secretary to it at once.

On Paragraph 14.

778. With respect to these sums, amounting together to 16,287 L., which were paid to the Colonial Treasurer of Malta for the purchase of land, would it not have been more correct to have regarded those sums as imprests, and not as final payments?—Certainly it would have been so, but they were reported to the Account Branch by the Works Branch, who were in charge of the expenditure, as having been final payments.

779. Then on any future occasion they will be charged as imprests?—Certainly, according to the directions of the Treasury as noticed in the Report.

780. It appears also that the sum paid, namely, 16,287 L., is somewhat larger than the value of the land required; how was that?—It was somewhat larger than the amount of the value of the land conveyed.

781. But it appears by the correspondence to have been considerably larger than the value of the lands required?—I think it means the value of the lands acquired, that is to say conveyed. We have actually built upon the land, but the legal conveyances are not yet completed. I may explain to the Committee that the tenure of land

in

## ARMY APPROPRIATION ACCOUNT.

On Paragraph 14—*continued*.*Chairman*—*continued*.

in Malta is most peculiar; a piece of 100 acres may be in the hands of 200 proprietors, and a conveyance for each piece is made out from time to time. The War Department has occupied the lands for its forts years ago, but the conveyances are not completed to such an extent as to enable us to hand the money over; therefore it is now in the hands of the Colonial Treasurer, who writes it off as soon as he is able to get the conveyances completed.

782. If you will look at page 134, you will see that in a letter signed by Colonel Loyd-Lindsay, it is stated that a sum of 16,227 *l.* has been paid, and a little lower down it is further stated, "whereas the value of the land required was 15,434 *l.* 8 *s.* 6 *d.*;" why was a larger sum advanced than the value of the land required?—My impression is that it is a misprint for "the land acquired," but I will refer to the papers. I have done so, and find that this is the value of the land *acquired*: the total value of the land *required* was 21,268 *l.*; but only the value of the land *acquired* ought to have been charged.

783. At the conclusion of this paragraph it is stated: "The circumstances of the case were submitted to the Treasury by the War Office, in a letter dated 29th December last, and the sanction of their Lordships to charge the amount against Army Grants was asked for;" has that sanction been given?—The directions of the Treasury have been given; they declined to sanction the charge, and ordered us to treat the payment as an imprest, which will be done through the accounts of the ensuing year. They said, and I need not say with perfect correctness, that the rule was clear that we were not entitled to charge it as ultimate expenditure unless it had actually been disbursed. We shall therefore put it into a Suspense Account, and shall adjust it in the Appropriation Account of the year which has just expired.

784. It is stated that "this sum has been charged against the Vote," it being the value of land purchased in the year 1876-77?—A sum of 2,714 *l.* 10 *s.* was so charged, but the Treasury directed that the sum for which the proprietors of the land had not actually given receipts, should be placed in a Suspense Account, and this has been done. It could not be effected in the year 1876-77, but it will be adjusted in the year which has just closed.

785. What I wish to ascertain is, whether this sum of 2,714 *l.* 10 *s.*, having been charged against the Vote, you have received Treasury sanction for so doing?—We have not, and we shall relieve the Account of the Vote to the same extent next year, holding it in a Suspense Account until the final payments are made.

786. Would it not be right, if the Treasury sanction has not been received for this charge, that you should surrender a larger sum this year?—We can do so, but we shall then have to re-charge it.

787. But if a sum is not properly chargeable against the Vote, it ought to be surrendered, ought it not?—Yes; I have asked the principal Bookkeeper about it, and I find that that can be done, and it would probably be the more correct plan.

788. (To Mr. *Welby*.) That would be the correct plan.

## ARMY APPROPRIATION ACCOUNT.

On Paragraph 14—*continued*.*Chairman*—*continued*.

rect plan, would it not?—Yes; the saving upon the Vote should be increased by that amount.

## On Paragraph 15.

789. (To Mr. *Milton*.) Was there any provision made in the Estimates of 1876-77 for this service for which 528 *l.* 17 *s.* 10 *d.* was expended on stores?—Yes, but not any detailed provision.

790. There was a provision made?—Yes, there was a provision made for such works generally. Being for a work of less than 1,000 *l.*, no detailed demand was made for the approval of Parliament for that work. Every year a sum is taken for the smaller items, the details of which are not stated to Parliament, but which have got to be carried through during the year for which the grant is made. It therefore appeared to be perfectly regular that we, having the opportunity of supplying the stores before the year began, should apply the money we had in hand for that purpose.

791. Were these stores of a peculiar nature, and specially purchased for this purpose, or were they general stores?—General stores which there was an opportunity to purchase, and for which we had remaining funds of the prior year which could be applied to the purchase. Of course the expenditure of the following year was abated by that amount.

792. (To Mr. *Ryan*.) If I understand the contention of the Comptroller and Auditor General rightly, it is that these stores should not have been purchased so as to have come in course of payment in the year 1876-77, as no provision had been made in the Estimates for them; it is not that having been paid for in that year, they were not properly brought to account in the year?—Clearly, having been paid for, they should have been brought to the account of the year in which the payment was made; but we went upon the description given by the Accounting Officer himself, in which he said that provision had been made for these stores in the year 1877-78; but for that we should have thought that he was right. It looked like an anticipation of the expenditure of the following year. Having money upon the Vote for 1876-77, they used it for that which they said they had provided for in 1877-78, and thereby they diminished the surplus to be surrendered in 1876-77, and left themselves with a larger amount to spend in 1877-78.

793. (To Mr. *Milton*.) Was this expenditure incurred in order to save the succeeding year, or was it incurred for the convenience of the service?—It is impossible for anyone but an officer of the Engineers' Department to answer that question.

794. (To Mr. *Welby*.) What would be the view of the Treasury upon this point?—The view of the Treasury would be to question whether the officer had given a correct description of the act. The sum is so very small, that it is hardly possible to conceive that he could have been endeavouring to save the Estimates of 1877-78 by the course he took, and in that case he was probably only buying ordinary stores, which no doubt he would be using in 1877-78 like any other stores purchased by the War Department,

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## On Paragraph 15—continued.

Chairman—continued.

Department, which were not exhausted before the close of the financial year. If it was done in order to save the Estimates of 1877-78, then I think the Treasury would agree with the Audit Office that it was not desirable to take that course.

795. (To Mr. Milton.) In all years you must provide stores to a large extent for coming years?—Yes; in fact, if the principal engineer at Malta had put down an ordinary work in his estimate as a work for which provision was to be made during the current year, and found that he could get on with it before the 31st March, having the money in hand, I submit that, for the good of the service, he was perfectly right to get on with that work. That is quite different from undertaking any new or special work. The sanction of Parliament is always obtained for such a work before a single penny is spent on account of it. Those are the large works detailed in Part I.

## On Paragraph 17.

796. Attention is called in this paragraph to "A sum of 324 l. 15 s. 7 d. expended in connection with the supply of water to the barracks at Gibraltar, which has been charged to Part II. of the Army Estimates under Vote 13," and to the fact that the cost of this service appears to have been "provided under Part I. of the Estimate in question." Were the works on which this expenditure was made originally contemplated, or are they distinct from those which have been formerly sanctioned?—They are distinct from the work which was sanctioned in the previous year in Part I., and of which a detail was furnished. If this view were carried out entirely, we could never add a brick or a chimney to a house that was once built without putting it into Part I., because the house had been built out of money provided in Part I. Supposing there had been an interval of two years between this addition to the plan and the plan itself, no one would have doubted that the expenditure ought to come out of the small items, but because it happened to come in the next year it was taken as being an extension of the original plan. It was a service which cost under 1,000 l., and therefore was not detailed. Let me put an illustration of the way in which the principle is carried out; take, for instance, the forts built out of the Defence Loan, we intend to add to them and repair them, and maintain them for years to come, but we shall not charge the cost of so doing to the loan, but to the current expenses of the year. The work here referred to "was completed in the latter year" (1876-77), as is stated in our reply quoted in this paragraph of the Comptroller and Auditor General's Report.

797. Had this additional work been provided for in Part II. of the Estimates?—Yes, entirely. The objection which is taken, as I understand it, is that it was provided for in Part II., and not in Part I.

798. That it was charged against Part II.?—Yes.

799. (To Mr. Ryan.) If you had regarded this as an absolutely distinct work, you would not have disapproved of what has been done, would you?—If we had understood that it was

# ARMY APPROPRIATION ACCOUNT.

## On Paragraph 17—continued.

Chairman—continued.

an absolutely distinct work, we should not; but inasmuch as the description of the work was, as far as we could judge, just the same as that of the work in Part I. as "laying on water to the barracks at Gibraltar," we thought it advisable to call attention to it as a case in which it seemed that the work had been completed out of a different sub-head from that under which provision was originally made for it; and, furthermore, we should have called attention to this because it was stated that it was completed in the year 1877-8, whereas it was provided for in the previous years from 1872-3 to 1876-7. There is a difference between this and the case of ordinary stores, because the work of supplying this water was a work of which details had been specifically given, and for which special sanction had been obtained. We are much more particular in seeing to the correct appropriation as between different years in the case of works, than we should be in a case of ordinary stores.

800. (To Mr. Milton.) Do you obtain special sanction for all works under 1,000 l. from the Treasury?—No, we do not.

801. But you are able to inform the Committee that although the purpose of the work is described as the same as that which was provided for in Part I. in previous years it was an absolutely distinct service?—It was a distinct service, and, as is stated in the quotation from our letter given in this paragraph, special provision was made in the Estimates for 1877-8 in Part II. for the sum so expended.

802. But it was paid in 1876-7?—Yes, it was.

## On Paragraphs 18 and 19.

803. With respect to the superannuations of the warders of military prisons, what, in your opinion, is the proper Vote under which these should be charged; should it be Vote 23 or Vote 24?—The Treasury, whose letter is given here, have decided that it should be under Vote 23, and I see no objection to that; it is a very minute affair, we cannot easily divide the exact pensions of a few warders and servants. The question, as you will see, was decided by the Treasury, who were then in communication directly with the Comptroller and Auditor General; and the Treasury were good enough to say that they agreed with us.

804. Vote 23 is for "Out Pensions," and Vote 24 is for "Superannuation Allowances"?—Yes.

805. These are superannuation allowances?—Yes; but they are received by pensioners, and therefore the Treasury thought that there was no need to break up the two payments to one person.

806. (To Mr. Welby.) Is it your opinion that these pensions should come under the head of "Out Pensions," and not under the head of "Superannuation Allowances"?—I think it is a moot point; there is a good deal to be said on both sides of it. The ground taken by the Treasury, whose decision I may say was given a long time ago, was that the Treasury were anxious to bring the whole charge of the non-effective pay of these men under one Vote. At the same time I admit that the fact of there being a Vote for "Superannuation Allowances" gives the Comptroller and Auditor General a fair reason

## ARMY APPROPRIATION ACCOUNT.

On Paragraphs 18 and 19—*continued*.*Chairman*—*continued*.

reason for the objection which he has raised. I do not think it is a question of very great significance in whichever way it is decided. Of course the object might be attained, in regard to the out-pensions, by putting a note that such additions are made. I do not think it is a case in which the Treasury would demur, if the altered classification was adopted.

807. (To Mr. *Milton*.) Apart from the Treasury decision, the matter is one of indifference to the War Office, I suppose?—Exactly so; it is a matter of indifference to us.

808. (To Mr. *Ryan*.) Have you anything to say upon this point?—The object of this paragraph, so far as the Audit Office was concerned, was to ensure really correct appropriation; that is to say, that what was a Superannuation Allowance should be charged to the Vote for Superannuation Allowances, and what was a pension should be charged to the Vote for Chelsea Pensions; and I may observe that they are not paid in one sum; separate receipts are taken for them; the one is paid in advance and the other in arrear. It seemed to us that as a matter of accuracy the two payments should be charged to the Votes upon which they would fall as a matter of appropriation.

809. (To Mr. *Milton*.) Are separate payments made for the superannuation allowances and for the pensions?—The one is paid quarterly, in arrear; and the other is paid quarterly, in advance.

810. But are the payments made together?—I believe they are paid at the same moment; but two receipts are taken, undoubtedly, as Mr. *Ryan* states.

*Mr. Seely.*

811. Would the War Office have any difficulty in complying with the suggestion of the Comptroller and Auditor General?—None whatever; there would be a little more trouble in posting, but nothing worth speaking of.

*Chairman.*

812. (To Mr. *Welby*.) Have you any further observation to make upon this point?—Perhaps I may be allowed to point out that the allowance as originally granted was not intended as a superannuation allowance under the Superannuation Act, but the attention of the Treasury was called by the War Office to the fact, that these warders were really losing under the old regulation, and therefore the Treasury consented to an allowance being given to them upon the principle of the Superannuation Act, that is to say, that they should receive the amount which that Act would warrant. I have no doubt that that was the reason for the decision which was arrived at. The Treasury did not consider this as an ordinary superannuation; they were merely applying the principle of the Superannuation Act to the case. That is not a point upon which I should rely very much, but I mention it in order to make this distinction. I think it is a question of classification, and when the Comptroller and Auditor General says that it is a question of misappropriation, it appears to me that that is rather a severer charge than is merited, having regard to the distinction I have pointed out.

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## ARMY APPROPRIATION ACCOUNT.

On Paragraph 20.

*Chairman*—*continued*.

813. (To Mr. *Milton*.) There would be no objection to extending the heading of superannuation allowances in the manner suggested by the Comptroller and Auditor General, would there?—None whatever; we have a note to that effect.

On Paragraph 24.

814. (To Mr. *Welby*.) It is stated in the Report of the Comptroller and Auditor General, that "the Treasury have requested the Committee of Council on Education to consider whether the annual return of each gentleman receiving a Civil Service pension or its commuted equivalent, who had been employed by the Science and Art Department during the preceding financial year, could not be sent in before the end of April, and they have suggested that no payment for the financial year then beginning to be current should be issued until the return has been made, and a sufficient time has been allowed to ascertain whether there are any abatements of pension to be made against the re-employed pensioners in respect of the year just ended"; has any agreement been come to with respect to this suggestion?—Subsequently to the correspondence which is alluded to here, a communication has been received from the Science and Art Department, in which, although not objecting to the recommendation or the suggestion of the Treasury, they stated that they were inclined to think that the end might be attained by other means. But the Treasury, in their reply, dated the 5th February last, stated that they were "of opinion that every precaution should be taken to avoid possibility of further losses resulting from over-payments, as in the recent case of Mr. Bradley," and that "they will be glad if the suggestions in their letter above referred to" (which contained the suggestion mentioned in this paragraph) "can be carried out, and the return in question for each financial year be furnished before the end of the ensuing April." The Committee, I think, may regard that as a direction to the Committee of Council to carry out the suggestion to which reference is made in this paragraph.

On Paragraphs 25 to 30.

815. (To Mr. *Ryan*.) The Comptroller and Auditor General states that he "applied to the War Office in December last for the particulars of the various regulations approved by the Treasury, which governed the contributions in question"; that is to say, the contributions received from various colonies in aid of military expenditure; has any reply yet been received to that letter?—We have not received those regulations.

*Mr. Seely.*

816. (To Mr. *Milton*.) Why were they not sent to the Comptroller and Auditor General?—It appears that the application for them was made in December last. If I recollect rightly, we had to enter into a correspondence with other Offices, I think both with the Colonial Office and with the Treasury. Replies from them have been received in our Office, but no answer has yet been given; it could not be given in time for this report. As you will see from these five paragraphs, it is rather an intricate question, and we

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On Paragraphs 25 to 30—*continued.*

Mr. Seely—*continued.*

are more anxious to give a correct answer than a quick one.

Chairman.

817. The War Office is taking steps to send an answer as soon as it can be done satisfactorily?—We are.

818. (To Mr. Welby.) I suppose this is one branch of the question of Exchequer Extra Receipts which is now being considered by a special Committee?—Certainly; this question of Colonial receipts has come before that Committee.

The Honourable ROBERT HENRY MEADE, called in; and Examined.

Chairman.

Mr. Meade.

820. WITH respect to the contributions made by the colony of Ceylon for military service, has any arrangement yet been come to?—No; no final decision has yet been arrived at.

821. Does the colony of Ceylon acknowledge a liability for the sum of 24,252 *l.* 16 *s.* 1 *d.*, which is now standing to its debit in the War Office books?—That will depend upon the decision which is arrived at between the Colonial Office, the Treasury, and the War Office; it is part of the general arrangement respecting which no decision has been finally taken. If the Committee will allow me to do so, I can make a short statement of this matter from the Colonial Office point of view.

Mr. Goldney.

822. You say that nothing has been done since the termination of the agreement of 1874; at least the Comptroller and Auditor General says that in his Report?—There has, in point of fact, been a good deal done since then, but no final decision has been taken.

823. But in the account of extra receipts, you state, or rather the Comptroller and Auditor General does, that a sum of 92,996 *l.* 1 *s.* 10 *d.* has been received from Ceylon from the 1st of June 1875 to the 31st March 1876, and paid over to the Exchequer?—Yes; the colony has been going on paying a contribution. The colony complained very much of the cost to which they were put for their defence; they wanted to spend money in public works, and to improve their police force, and otherwise; and there was some correspondence between the War Office and ourselves upon the subject, the result of which was that we abolished the Ceylon regiment of rifles, thereby effecting a saving, as we were told, both immediate and ultimate of about 45,000 *l.*

Mr. Seely.

824. A year?—A year; and then, with the sanction of the Treasury, an arrangement was made by which the colony paid 1,240,000 rupees a year, instead of 1,600,000 rupees, as they had been paying. This arrangement was to continue pending a final settlement of what I may call the periodical revision, which was to take effect from July 1874.

825. What was the rupee supposed to be worth?—There is also a further dispute on that point. This arrangement subsisted for some time; then a War Office Committee made a report, the result of which was that the colony was to be

# ARMY APPROPRIATION ACCOUNT.

On Paragraphs 25 to 30—*continued.*

Chairman—*continued.*

819. May the Committee hope to have the report of that Committee before long?—That Committee was pressing its inquiry, and was making considerable progress in it until the recent change, under which the Financial Secretary of the Treasury became Secretary of State for War, but I believe I may state that the Financial Secretary of the Treasury is about to take it up again, and to prosecute it as quickly as the circumstances permit.

Mr. Seely—*continued.*

called upon to pay a sum in excess of that which they had hitherto been paying, namely, 1,240,000 rupees, which occasioned great disappointment. The Secretary of State felt himself as a layman unable to criticise the War Office Estimates, and he therefore offered to pay a sum of 100 *l.* a man, besides providing barrack accommodation in the colony. This the War Office objected to, and a good deal of departmental correspondence ensued. At last the two Secretaries of State and the Field Marshal Commanding in Chief met, and they arranged to compromise. This compromise was, roughly speaking, that the colony was to pay 1,150,000 rupees a year; to pay the pensions of the Ceylon Rifles, and the ineffective charges of half a company of gun lascars, Trincomales remaining as hitherto an Imperial charge; about this there had been no dispute. That arrangement was accepted by the Colonial Office, and the War Office were invited to obtain the Treasury concurrence, which was necessary to the arrangement. The War Office communicated with the Treasury, but (speaking from a Colonial Office point of view) they did not state the case with the fullness which the circumstances appeared to us to require. The Treasury therefore not unnaturally declined to authorise the receipt from the colony of any sum less than that which had been decided on by the War Office Committee, and they also declined to fix any value upon the rupee. They insisted on the money being received in sterling.

Mr. Goldney.

826. Does this sum of 24,252 *l.* 16 *s.* 1 *d.* which stands to the debit of the colony in the War Office books, in fact form a portion of the money that you have received from Ceylon; have you not received more from Ceylon than the 92,996 *l.* 1 *s.* 10 *d.* which has been paid into the Exchequer?—I do not know what the 92,996 *l.* is.

827. If you will turn to page 145 you will see it entered among the Extra Receipts?—I see it. (Mr. Milton.) The 24,252 *l.* has been paid by the War Office.

828. From the 1st June 1875, to the 31st March 1876, 92,996 *l.* was paid into the Exchequer as Extra Receipts; has the sum which you have debited to them, and which has gone in some shape or other into the Exchequer, actually come from Ceylon as a matter of account, or not?—Yes; it has come from Ceylon, and, I presume, forms part of the 1,240,000 rupees at present annually paid by the Colony.

829 Has

## ARMY APPROPRIATION ACCOUNT.

On Paragraphs 25 to 30—*continued.*Mr. Goldney—*continued.*

829. Has this sum which has been debited as having been paid by the War Office been received from Ceylon, although not credited to them?—Yes; it has been paid over regularly in Ceylon.

830. By whom?—The Colonial Government.

831. Not to the War Office, if I understand it rightly?—It is paid over to the War Office Account in Ceylon, where the money is expended.

832. What fund do you debit that sum to?—That sum is the military contribution which is paid in monthly sums by the Colonial Government, and there our cognisance of the sum ends.

833. What I want to get at is this, you have a certain amount of Extra Receipts reserved, which, as you will see if you turn to page 148, amounts to 50,084 l. 10 s. 11 d., which you have not paid over to the Exchequer?—I am only concerned for the Colonial Office; that is a War Office matter.

834. (To Mr. Milton.) I suppose these drafts are drawn on the Paymaster General, simply without reference to any account to which they are to be debited. I refer to the aggregate sum of 24,252 l.?—Yes, that is done by the War Office through the Treasury Chest in the Island of Ceylon, and the amount is now held to the debit of the Ceylon Government, awaiting the final adjustment of these items, when it will be brought into the settlement on one side or the other. As soon as the amount of the contributions is decided, we shall be able to declare a balance one way or the other.

835. Are they making contributions still?—Yes; they are making contributions at the old rate amounting to 92,996 l.

836. They only raise an objection to this specific contribution with reference to the pay of the Rifles?—No; the fact is this. They were in hopes that the disbanding of the Ceylon Rifles would be attended with a large diminution of colonial expenditure, but at that time, unfortunately, the cost of almost everything connected with the soldier was being raised, and the consequence was that the total amount which the colony had to pay, remained about as large as it had been before the disbandment of the Ceylon Rifle Regiment.

837. If you debit them specifically with that amount of 24,252 l. as having been advanced by you in respect of the payment to the Rifles, do you credit them with this 92,996 l. for any services specifically or only on the general amount?—We have handed that over to the Exchequer, therefore we have not got it on our books. They have had credit for that amount towards the final settlement.

838. You do not credit them for any specific payment at all?—No.

839. Either for pensions or under any of the other heads?—No.

840. What you receive from them is only taken as a payment on account?—Yes. (Mr. Meade.) The colony has not been specifically paying these pensions; all the colony has paid has been a military contribution of a certain sum. The arrangement with regard to the payment of pensions is an arrangement which has been made by the War Office.

841. Has the amount of the contribution paid by the colony been increased or decreased since 0.9.

## ARMY APPROPRIATION ACCOUNT.

On Paragraphs 25 to 30—*continued.*Mr. Goldney—*continued.*

1874?—Since 1874 it has been decreased by the reduction of the Ceylon Rifles, which represented a considerable sum. It was originally 1,600,000 rupees, and we (I speak of the Colonial Office) are now paying 1,240,000.

842. Then you are paying over to the War Office 360,000 rupees less than you were in 1874?—Yes.

Chairman.

843. The change was made in the year 1873, was it not?—The old agreement expired in July 1874.

844. (To Mr. Milton.) But the change as to these pensions was made in the year 1873; at least it appears that no provision was made for them in the Army Votes subsequent to the years 1873-74?—Yes; it began on the 1st April 1874.

845. (To Mr. Meade.) And no determination has yet been arrived at?—No.

846. (To Mr. Milton.) When the proposal was made to you by the Colonial Office, which is stated to be concurred in by the Secretary of State, that the pensions should in future be paid direct by the colony, was it intended that you should act as agents for the colony, or that the money should be paid to the men directly by the colony itself?—It is intended, when the arrangement is come to, that the pensioners shall be paid direct by the colony without our intervention at all.

847. Although no provision was made for these pensions in the Army Votes subsequent to the year 1873-74, you have continued to pay them as agents for the colony?—Exactly so.

848. Have you informed the Ceylon Government every year what sum they owe you on account of this agency?—No, I think not. (Mr. Meade.) All communications on that subject would naturally pass from the War Office to the Colonial Office.

849. Have you been informed each year what has been paid by the War Office as agents for the Ceylon Government?—No, I cannot say that we have; I believe we have received no account of that kind.

850. Then does the Colonial Office acknowledge, on behalf of the Ceylon Government, any liability for this sum of 24,252 l. 16 s. 1 d.?—The Colonial Office, on behalf of the colony, admits the arrangement come to between them and the War Office; a feature in which was that the colony should undertake these pensions.

851. For the future?—For the future.

Mr. Goldney.

852. From 1874?—Yes.

853. And you have paid nothing to the War Office in respect of them from that date?—We have not.

Chairman.

854. Although you have admitted the proposal since that date, you have not paid any of these pensions?—No; because the War Office afterwards departed from that arrangement, and declined to carry it out as a whole. What I was explaining just now was, that from our point of view the War Office have not placed the matter fully before the Treasury, and they therefore not unnaturally

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Mr. Webb, C.B.,  
Mr. Ryan,  
Mr. Milton, C.B.,  
and Mr. Meade.

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Mr. Welby, C.B.,  
Mr. Ryan,  
Mr. Milton, C.B.,  
and Mr. Meade.

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# ARMY APPROPRIATION ACCOUNT.

On Paragraphs 25 to 30—continued.

*Chairman*—continued.

unnaturally declined to sanction the arrangement.

*Mr. Goldney.*

855. (To Mr. Milton.) If I understand it rightly, the War Office have paid the pensions, but the Colonial Office have not repaid them?—Yes, the poor fellows must get their pensions. (Mr. Meade.) We have gone on paying the contribution according to the rate which was agreed upon with the War Office and the Treasury pending the settlement, that settlement not having been arrived at yet.

*Sir H. Selwin-Ibbetson.*

856. (To Mr. Milton.) The sums which you have received in that way remain in a suspense account until the settlement is arrived at?—Yes.

*Chairman.*

857. (To Mr. Welby.) Is it not the opinion of the Treasury that it is most desirable that a speedy settlement should be come to with respect to this question?—Distinctly so. If the Treasury understand the question aright, the War Office have been paying these pensions, not out of Parliamentary funds, but out of their general balances, and during this time the Ceylon Government had not been paying anything at all. The consequence is, that year after year an unadjusted account is running, which, in the opinion of the Treasury, should most distinctly be cleared up and adjusted without any further delay; or if it is desirable to keep the account unadjusted certainly the amount must be included in the War Office estimates; it should not be left outstanding for an indefinite number of years on the War Office balance sheet.

858. It is a case similar, although fortunately on a smaller scale, to that which was before the Committee last year with respect to similar services in India?—It is of a similar character, I should say.

859. Is the Treasury taking any steps, as the matter appears to have been referred to them, to bring this question to a speedy settlement?—The question of the colonial military contributions has been for a very long time driven backwards and forwards between the War Office, the Treasury, and the Colonial Office. As far as I am aware, at the present moment, the Treasury have not accepted the proposal with regard to Ceylon, and it lies with the departments who are more especially at issue, namely, the War Office and the Colonial Office, either to enforce upon the Treasury the agreement at which they have arrived, or to suggest a compromise.

860. But until any settlement is come to you are of opinion that the War Office should pay no sums which are not provided for in its Estimates?—Certainly.

*Mr. Seely.*

861. (To Mr. Meade.) Is there any other point in dispute between Ceylon and the War Office besides this of the pensions?—The point at issue between the War Office and the colony is not so much in regard to the pensions as in regard to the whole subject of the military contribution; that is to say, the total amount that is to be paid. The Secretary of State for War appointed a com-

# ARMY APPROPRIATION ACCOUNT.

On Paragraphs 25 to 30—continued.

*Mr. Seely*—continued.

mittee to examine this question at which neither the Colonial Office nor the colony was represented, and the Secretary of State for the colonies thought that he would not be justified in paying the amount which that committee recommended, but there was no dispute between the colony and the War Office as regards the particular item of pensions.

862. Then does the colony admit that 24,000*l.* is due to the War Office on the ground of their claim on account of the pensions, putting aside everything else?—Yes, they are quite prepared to admit that as part of the military contribution.

863. I mean that it is a sum which they think it fair that the War Office should receive. They consider that the War Office properly paid the pensions, and therefore is entitled to receive the money?—Yes; the Secretary of State has already signified his approval of that.

864. The reason why the colony has not made the payment on account of these pensions is that there is some other question in dispute?—Yes. (Mr. Milton.) I think there is a little misunderstanding on this subject. Ceylon is paying us 1,240,000 rupees a year, and they contend that that ought to include pensions; therefore we are not in a position to send in a bill to them for pensions besides, until the two Secretaries of State and the Treasury have settled whether the sum they are paying does include pensions or not. (Mr. Meade.) I was speaking of the compromise which the two Secretaries of State had arrived at. Part of that compromise was that the colony should pay a smaller number of rupees, but should undertake the charge of the pensions; it was in that sense that I said that the colony of Ceylon admitted its liability to pay these pensions. (Mr. Milton.) That puts it in an entirely different position from the Indian case, because if ultimately the Treasury agree that the 1,240,000 rupees does cover the pensions, we shall not have expended for the colony any money that we shall have to get back. There was no moment at which we could break into the existing system; the poor fellows were entitled to their pensions, and we went on paying them.

*Chairman.*

865. But have you from year to year asked for the money for the payment of these sums which have been debited to the colony?—Not specifically for these pensions, because it is understood that they are paying us a periodical contribution which, in their opinion, includes the pensions; if it is settled that it does not include them, we shall render an exact account for them.

*Sir H. Selwin-Ibbetson.*

866. It has not yet been decided between the departments whether the pensions are included in the contribution which is paid or not?—It has not.

*Mr. Goldney.*

867. You have paid over the sums which you have received into the Exchequer as Extra Receipts, and you have debited to the colony the sums you have paid?—Yes.

868. You are still waiting to have that adjusted between

ARMY APPROPRIATION ACCOUNT.

On Paragraphs 25 to 30—*continued.*

Mr. Goldney—*continued.*

between yourselves by the two Secretaries of State?—Yes.

869. In the interim you cannot take any other course?—No.

Mr. Seely.

870. You have been trying to get this settled for about four years?—Yes, more or less; our last letter to the Colonial Office was dated the 10th September 1877.

871. Do you think there is any probability that in the next four years you will come to a result?—Yes, I think so.

Chairman.

872. Has any answer been received to that letter which you spoke of?—No. (Mr. Meade.) The official correspondence ends there, but since then the late Secretary of State for the Colonies wrote privately to the Secretary of State for War on the subject. So far as I know, nothing came of it, and the matter will have to be taken up by the new Secretary of State, Sir Michael Hicks Beach.

On Paragraph 31.

873. With respect to the contributions from Honduras, it appears that there are suspended credits, to the amount of 28,984*l.* 8*s.* 10*d.*, which have been received at various periods since the year 1867-68 from the colony of Honduras. If I understand the matter rightly, the question with respect to these payments relate to three different sets of years, do they not?—Yes, I presume so.

874. Up to January 1872 there is no dispute as to principle, but inability on the part of Honduras to pay?—Yes; there is no dispute as to principle at that time.

875. With respect to the three years from 1872 to 1875, there is agreement as to principle, and also payment of the sum due, is there not?—Yes.

876. But, subsequently to 1875, there is no agreement as to principle, but a payment at the rate of 5,000*l.* a year?—There has been an agreement between the War Office and the Colonial Office that the colony should continue to pay 5,000*l.* a year, and that the original debt of 7,000*l.* odd should remain to be discharged when the colony was in a condition, financially, to discharge it. We wrote to the Treasury, and asked their concurrence; they replied, objecting; we replied to that again, and I was under the impression, until I came into the room just now, that that letter of ours had not been replied to by the Treasury; but Mr. Welby has shown me a letter from them, dated December 1877, in which they expressed their opinion that, if the colony could not afford to pay for its military defence, a separate Vote ought to be taken for it. That letter took me by surprise, and I have sent back to the Colonial Office to ascertain the reason why nothing was done upon it, and I find that the explanation is that there was a misunderstanding between the Treasury and the Colonial Office. We did not understand their letter of December to refer to our previous letter; we understood it to refer to a subsequent one which we had written to them, asking for further assistance to the

G.9.

ARMY APPROPRIATION ACCOUNT.

On Paragraph 3. —*continued.*

Chairman—*continued.*

colony, in consequence of a report we had received from the governor giving a very gloomy account of the state of affairs, and saying that he feared an inroad by the Indians. We therefore wrote to the Treasury, and asked for further Imperial assistance. This letter from the Treasury was in answer to that, and we did not see that it was also intended to reply to our previous letter with regard to the military contribution. That was a misunderstanding which, of course, must now be set to rights.

877. Has the colony been paying recently at the rate of 5,000*l.* a year?—Yes. It continues to pay 5,000*l.* a year, which is all that according to our views the colony can pay. I may add that two or three mails ago, we received a further appeal from the governor, stating that the colony was in a very impecunious position, and suggesting that the payment of the 5,000*l.* a year should be suspended for the present, but the Secretary of State declined to permit that, and said that it was absolutely necessary that the colony should continue to pay the 5,000*l.* a year. We did not trouble the War Office or the Treasury upon the subject.

878. Is it likely that any conclusion will be arrived at upon this point before the next meeting of the Committee?—I should hope so; now that this misunderstanding has been cleared up, it will be attended to at once.

[Mr. Meade withdrew.]

On Paragraph 33.

879. (To Mr. Milton.) The Comptroller and Auditor General states that he has suggested that steps should be taken for closing certain accounts of balances on the "General Volunteer Capitation Account;" do you see any objection to that suggestion?—None; we have already passed that amount through the books to the credit of the Exchequer.

On Paragraphs 34 and 35.

880. With respect to the Fines Fund, did the regulations sanctioned by the Treasury in 1874 apply, in your opinion, to the Militia fines?—No, certainly not. The Treasury have only given their decision, and their sanction to the arrangement regarding the Line Fund, or rather receipts, for there is no fund.

881. What has been done with respect to the Militia fines?—The Militia fines, like the unclaimed residues of soldiers' effects referred to earlier in the Report, have been the subject of consideration by a Committee, and the subject of a report of the Secretary of State which has just been furnished by that Committee.

882. They appear to have accumulated from year to year, and not been spent?—Quite so.

883. But, as I understand it, owing to the expenditure to which the Army fines are applicable having exceeded the amount of the Army fines, the Militia Fines Fund has been applied to that purpose?—As I observed just now, there is no fund formed, either for the Line or for the Militia. An account is kept of the receipts of both, and, taking the two together, there is a balance in hand. Taking each item by itself, our estimate for the expenditure on account of the

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Line

Mr. Welby, C.B.,  
Mr. Ryan;  
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Mr. Ryan; and  
Mr. Milton, C.B.

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# ARMY APPROPRIATION ACCOUNT.

On Paragraphs 34 and 35—*continued.*

*Chairman*—*continued.*

Line was short, and that deficiency threw the fines for the army into a debit.

884. At page 157 it appears that the amount of gratuities paid to well-conducted soldiers on or after discharge from the army, which are defrayed from the Army Fine Fund, had amounted, in the years from 1869-70 to 1876-77 inclusive, to 145,953 *l.*, whereas the Army fines only amounted in that time to 143,596 *l.*, and that the balance has been defrayed from the Militia fines; is not that so?—Starting with what I said just now, that there is no fund whatever, this statement of accounts could only give a balance by showing the nett sum. We have recorded the Line receipts, and we have recorded the Militia receipts; we have recorded the Line disbursements, and we have recorded the Militia disbursements. The Line receipts were 2,356 *l.* under the expenditure. We had very uncertain grounds for our estimate, and in estimating we could not possibly be sure that we were within our figures. At the same time, we could not deny to each man, as he came up for discharge, the amount which the regulation gave him, and accordingly we paid it to him. On closing the account it appeared that in consequence of the extraordinarily numerous discharges last year of men who had completed their 21 years since the Crimean war, the expenditure exceeded our means as furnished by Army fines, but inasmuch as neither the Army fines nor the Militia fines were funded, I cannot admit that we took it from one fund to put it into the other fund, for no funds existed.

885. In what manner do you propose to meet this expenditure?—As soon as ever the excess was discovered the rate paid to the men was lowered. From the 1st January 1877, each man has only received 10 *s.*, instead of 1 *l.* for each badge.

886. And you reckon that the excess of expenditure will be repaid in that way?—Yes, it will be repaid by that means.

887. And the sums received on account of the Militia fines, will be applicable to whatever purposes may be hereafter determined upon?—Exactly so.

888. (To Mr. Ryan.) Does this statement at all affect your view?—Our reason for calling attention to this was, that whether you call it a fund or whatever it is, sums were deducted as fines for drunkenness from the Militia; which sums were applied in aid of the Vote for gratuities upon discharges from the Line, and as this practice had not been submitted to the Treasury for their approval, and as it seemed doubtful to us whether the Militia should not have had themselves some benefit from this money, instead of its going to the Line, we thought it our duty to call attention to it.

*Mr. Goldney.*

889. (To Mr. Milton.) Do you intend to recoup the Militia when you get the sums back which you have paid out of the Militia fines?—Certainly, every penny will be given to the Militia. A considerable part of this money was paid to men who had been in the Militia, and who finally qualified solely by the Militia, but that will not prevent our giving back the whole of what we have received from the Militia, to the

# ARMY APPROPRIATION ACCOUNT.

On Paragraphs 34 and 35—*continued.*

*Mr. Goldney*—*continued.*

Militia regiments generally, and to them solely. That is what is proposed in the arrangement which has just been laid before Colonel Stanley.

890. Until of late years, the expenditure of this nature has been largely exceeded by the receipts from fines, has it not?—Yes; and it was precisely in consequence of our having so large an amount of receipts unexpended, that the area for expenditure was enlarged, and the enlarging of it at a time when an exceptional number of men were taking their discharges, having enlisted during the Crimean War, brought the expenditure above the Estimate.

*Sir H. Selwin-Ibbetson.*

891. I understand you to say, that by a reduction of the gratuity, you expect to bring it down to the receipts?—Yes.

*Mr. Goldney.*

892. You say you have reduced it from 1 *l.* to 10 *s.*?—Yes; we have reduced it from 1 *l.* to 10 *s.* for each badge.

*Mr. Seely.*

893. You appear to have paid only 22 *l.* 3 *s.* 6 *d.* for the Militia from 1869-70 to 1876-77?—Just so. Until the Committee I have spoken of sat in the last few months, no general plan had been agreed to or submitted to the Secretary of State for expending it upon the Militia.

894. Has that been done now?—Yes; it is proposed to give so much to each regiment according to the strength of the regiment.

895. Can you explain how it happens that in one year there has been a sum of 1,500 *l.* paid to the Army; in another year as much as 45,000 *l.*, and in another year 29,000 *l.*?—Finding that the fines were growing so large in amount, Lord Cardwell decided that the gratuity should be given both to men for their badges on discharge, and also to those who had received medals without gratuities. That of course caused an immense expenditure in the year when it was first adopted, for we went back to all the old soldiers who had not got the gratuity, and made it up to them in accordance with the new rule.

896. When was that acceded to by the Treasury?—It was sanctioned by the Treasury in 1873-4. The first large amount paid under it was paid in March 1874.

897. The amount in 1874-5 was 45,043 *l.* 10 *s.* 4 *d.*, and the amount in 1875-6 was 29,583 *l.* 6 *s.* 3 *d.*?—Yes.

898. How came it to drop so largely in one year?—Because in the first year most claims came in, in the second year they were dropping in of course more gradually. The whole has been spent for rewards to good service soldiers.

On Paragraphs 36, 37, 38, 39, and 40.

*Chairman.*

899. With respect to the question as to the balance stated to be due to the Sittingbourne and Sheerness Railway Company, has any final settlement yet been arrived at?—I believe so; but it was so completely a legal question that I asked Mr. Clode to attend here, and he is ready to be examined on the subject.

## ARMY APPROPRIATION ACCOUNT.

On Paragraphs 36, 37, 38, 39, and 40—*continued*.

Mr. CHARLES MATHEW CLODE, called in; and Examined.

*Chairman.*

900. ARE you the Legal Secretary to the War Department?—Yes.

901. Has any final settlement been arrived at with respect to the question which was in dispute with the Sittingbourne and Sheerness Railway Company?—Yes; we paid what we believed to be the amount due to them under the award on the 1st December 1877, subject to a question which still arises as to the payment of interest upon the amount of that award. I may state that the claim originated in June 1861, under "The Defence Act, 1860"; the amount of it was at first 171,000*l.*; then it was modified to 94,500*l.*; then they offered to accept 30,000*l.*, which we refused, and ultimately 20,000*l.* was awarded to the company. There is still a question open as to whether that award should carry interest or not. With regard to their clearance rights, there is a decision given by Sir Page Wood as Vice Chancellor, which would not entitle them to interest; but with regard to that part of their land of which we have been in possession, we think they are in fairness entitled to interest, and have offered to pay it, but that does not satisfy them, and I believe they are going to the Supreme Court to see if they can get interest on the whole sum of 20,000*l.* We have settled the debt which was found to be due from them to us, by deducting it with interest. This debt was 3,800*l.*, and the interest upon it at 5 per cent. from the 20th March 1859 was 3,553*l.* 15*s.* 5*d.*, making together 7,353*l.* 15*s.* 5*d.*, which they have paid by deduction from the amount due by the War Department.

*Mr. Goldney.*

902. Assuming the interest question to be settled, I understand that there is still a question open as to the amount of works which the Company were to perform?—No; they did these at once. The works we were somewhat anxious for, and we let them into possession of the land in 1859, while General Peel was in office, with the view of enabling them to commence and execute the works as soon as they possibly could. There was no delay in the execution of the works.

*Chairman.*

903. Then there is no question pending as to the construction of the works?—No.

*Mr. Goldney.*

904. The Comptroller and Auditor General says, "I have not been informed of the terms of the arbitration which, in any case, as the question of the works is still open, would hardly appear to be a final settlement," is that inaccurate?—There have been two arbitrations; first they went to arbitration as to what they should pay us for the land they took from us in 1859. Prior to that, there was an agreement that they should execute certain works; in order to enable them to execute those works we allowed them to go into possession of the land, and those works have been executed for many years.

905. Then no question with respect to them remains open?—None whatever.

906. The only question remaining open is as to interest upon the award?—Yes; we have settled the interest upon the sum they owed to us, but there is still a question open as to the interest upon the sum we owed to them.

907. But only upon the matter of interest?—That is all.

908. All other matters except the amount of interest on the sum you owed to them are settled, and the only question still outstanding is whether that interest is payable or not payable?—Quite so.

[Mr. Clode withdrew.]

On Paragraph 41.

*Chairman.*

909. (To Mr. Ryan.) It is stated that enquiries were made by the Comptroller and Auditor General, whether any steps are taken from time to time to discharge the liability of the War Office, in respect to the various amounts unclaimed for remittances made by soldiers and others prior to the 1st April 1871; has any reply been received to that application?—A reply has been received, and it is to the effect that: "It is proposed that from the 1st proximo, the account for soldiers' remittances be kept in years, and arrangements instituted so that the names of the parties entitled to the balance may be clearly ascertained." I think, as far as I can judge, this will probably meet our view.

## MILITARY FORCES LOCALIZATION ACCOUNT.

*Chairman.*

910. At the conclusion of the Comptroller and Auditor General's Report he states: "It seems somewhat doubtful whether the course which has been pursued is entirely in accordance with the intentions of the Military Forces Localization Act, in which the establishment of one Tactical Training Station appears to have been contemplated, and not the purchase of a small tract of land in Yorkshire, and an extension of the Camp at Aldershot. It will be seen that their Lordships" (that is to say the Treasury) "have not favoured me with any expression of their

*Chairman—continued.*

opinion on this point." Has any further opinion been received yet by the Comptroller and Auditor General from the Treasury?—The Comptroller and Auditor General has received no further communication on this point.

911. (To Mr. Welby.) Can you state what is the opinion of the Treasury with respect to this point?—The Treasury did not understand that the Audit Office were raising an objection to the interpretation which they had put upon the law; they looked upon it as an incidental expression of opinion, and in answering the letter they

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Mr. Ryan, and  
Mr. Milton, C.B.

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Mr. Clode.



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Mr. Ryan, and  
Mr. Milton, C.B.

MILITARY FORCES LOCALIZATION ACCOUNT  
—continued.

MILITARY FORCES LOCALIZATION ACCOUNT  
—continued.

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Chairman—continued.

they did not enter upon that point. I believe that is the reason why there was no special answer given to that observation. The view taken by the Treasury is, that although the schedule of the Act mentions a Tactical Training Station, it was not intended by that mode of speaking to confine the discretion of the Government to one station; and upon the recommendation of the War Office they agreed to the course described by the Comptroller and Auditor General. That was the view which the Treasury took of the

Chairman—continued.

Act, but they took it, I believe, without asking a legal opinion upon it, because they had no doubt in their own minds.

912. The course pursued has had the sanction of the Treasury?—It has.

913. (To Mr. Milton.) Is there any observation which you would like to make upon this point?—No, none whatever; as it was a matter of account, we followed the direction of the Treasury.

[Mr. Milton withdrew.]

CIVIL CONTINGENCIES ACCOUNT.

Chairman.

914. (To Mr. Welby.) It appears that a Bill of the Dominican Government has been dishonoured?—Yes.

915. Has any information been received from the Foreign Office on this point since the date of the Treasury letter of the 13th March last?—On the 23rd March a letter was received from the Foreign Office enclosing a copy of a letter from the British representative at Port au Prince, who states that the Dominican Government had no money to enable them to honour their Bill. In reply, Lord Derby instructed the British representative to demand an explanation without delay from the Dominican Government as to the reason which led them to depart from the solemn engagement which they had entered into to the British Government. That letter was dated the 23rd of March only, and, of course, no answer has been received to it yet.

916. But, if I understand it rightly, it is stated by our representative that the Dominican Government say they have no means?—Yes, that Government stated that they had no means to pay; but the object, I presume, of the Secretary of State in addressing a further letter is to know whether the Dominican Government have any further proposal to make. They had pledged themselves to meet this Bill when it fell due, and they have failed to redeem their pledged honour.

917. These payments have been due from 1871-72, 1872-73, and 1874-75, have they not?—Yes.

918. Is it your opinion that it is desirable to keep such an asset upon the account?—Until the time when this Bill was dishonoured the Dominican Government had pledged themselves to pay a compromise sum, and, of course, as long as that was the case it was desirable to keep the amount outstanding.

919. Was the sum they had pledged themselves to pay equal to the total sum of 14,291 l. 9s. 8d.?—I believe I am right in saying that it was a compromise sum which they undertook to pay.

920. The original sum was 25,000 dollars, I think; that would be 5,000 l.?—I have not got here a statement of the original claim.

Sir H. Selwin-Ibbetson.

921. The original claim was 14,291 l., was it not?—That was the amount, I believe, which the Dominican Government undertook to repay. I may state that this was the first of the bills;

Sir H. Selwin-Ibbetson—continued.

there is a series of bills which fall due from time to time for the year.

922. These three bills were not all that the Dominican Government promised to pay?—I believe not.

923. What I wish to ascertain is this: is it not the case that, even if the Dominican Government had paid all these bills, the amount would be considerably less than the 14,291 l. standing as debt on the account of this fund?—I have the paper now before me which explains the matter. The amount of claim was, as is stated here, 14,291 l., and the arrangement made by the Government was to accept those bills in settlement of the claim, which would amount to 5,000 l.

Chairman.

924. Would it not then be more correct, instead of allowing this 14,291 l. to stand as an asset, to vote the difference between the 5,000 l. and the 14,291 l.?—I think it would be better, as long as there was a prospect of receiving this sum, on account, to make one transaction of it, and to take the sum which the Dominican Government have promised to pay, or, at all events, the sum we actually receive in diminution of the sum they originally owed, and to pay the difference by a Vote. We are waiting for a reply to the letter which has been addressed to the British representative; if that reply should be of an unfavourable character, the sooner the account is closed the better; but if there is any prospect of the Dominican Government making a payment, on account, it will be better to make one affair of it in closing the account.

925. There must be a loss of 9,000 l. or more?—Yes.

Mr. Goldney.

926. But the compromise was that we should lose that amount, on condition that this 5,000 l. was paid?—Yes.

927. And one of these Bills is not paid?—That is so.

Sir H. Selwin-Ibbetson.

928. You did not propose to close the account until the date of the third bill becoming due had passed?—Yes; exactly so.

Chairman.

929. With respect to the sum due from the Receiver of Constabulary in Ireland, in respect of weights and measures for the year 1872-73, and 1874-75, have you any further information to

CIVIL CONTINGENCIES ACCOUNT—*continued.*

*Chairman*—*continued.*

to give to the Committee?—Since the date of this letter of the 13th of March, a further letter has been written to the Secretary for Ireland, pressing him to make the necessary provision by legislation to allow the payment to be made.

930. Will a Bill be introduced this Session for that purpose?—This letter was written on the 6th of April, and no reply has been received to it yet.

931. Have you any information to give to the

CIVIL CONTINGENCIES ACCOUNT—*continued.*

*Chairman*—*continued.*

Committee with respect to the sum of 40*l.* due by the Corporation of Dublin?—Since the date of this letter of the 13th of March, no further communication has been received from the Irish Government upon that point.

932. I believe an estimate has been presented to Parliament for the Epping Forest Commission?—Yes.

933. And a Vote will be taken for it?—Yes, that will be adjusted.

Mr. Welby, C.B.,  
and Mr. Ryan.

10 April 1878.

TREASURY CHEST ACCOUNT.

Mr. Seely.

934. (To Mr. Ryan.) The Comptroller and Auditor General says, in his Report, that he has not got vouchers before him to support some of these accounts; why is that?—The Comptroller and Auditor General could not have vouchers for the Treasury Chest Account, because it is a banking account. The vouchers come to him with the accounts of the departments when the advances from the Treasury Chest are paid back by them to the Treasury Chest. The Treasury Chest makes advances on account of the departments.

935. Why does the Comptroller and Auditor General call attention to it?—This is the first time that the Comptroller and Auditor General has reported upon the Treasury Chest Account. Formerly he himself made up that Account, but it was felt to be inconsistent with principle to make him an executive officer, and consequently the duty of keeping the Treasury

Mr. Seely—*continued.*

Chest Account was transferred to the Treasury. Parliament thought it desirable that there should be an audit of an account of that kind, and it was consequently proposed by the Treasury that there should be an examination of the books, and that the Comptroller and Auditor General should report anything that might seem to him to be too long outstanding or otherwise irregular upon the Treasury Chest Account just as upon the Civil Contingencies Account. If there had been any claim upon the Treasury Chest Account unduly prolonged it would have been our duty to have brought that before Parliament, or if there had been any sum that ought to have been recovered it would have been our duty to call attention to it, but in the present instance we have had no observation of that kind to make.

936. Then you are perfectly satisfied?—We are.

CONSOLIDATED FUND ACCOUNT.

*Chairman.*

937. (To Mr. Welby.) There were two points on which you promised to give further information to the Committee. The first was with respect to the arrears of interest on the loan made to the Anglo-Maltese Dock Company?—The Account which was before the Committee was the Account for the year ended the 31st March 1877, and there were certain arrears outstanding then; from information which I had obtained, I was able to inform the Committee that a very small sum was outstanding on the 31st March 1878. The Committee then expressed a wish that they should have an account laid before them, showing what were the arrears outstanding on the 31st March 1877, and what had been paid off of those arrears during the currency of the year 1877–78. I have obtained such an account from the Admiralty, and, with the permission of the Committee, I will hand it in (*handing in the same*). Perhaps I may state upon that, that all the arrears outstanding on the 31st March 1877 were paid off during the currency of the next year.

*Chairman*—*continued.*

938. Then with respect to the loans made under the Public Works Loans Act, you stated that a decision would shortly be arrived at with respect to the necessity of the Comptroller and Auditor General undertaking the examination of the securities for those loans; has any decision been arrived at?—I am sorry to say that no decision has been come to upon that point up to the present moment.

939. And also with respect to the question of the control exercised by the Local Government Board over the application of those loans?—In the Public Works Loans Bill, which is now undergoing a second reading in the House of Commons, a clause will be found which extends the power of the Local Government Board to follow the application of the loans granted by the Public Works Loans Commissioners.

940. And to ensure that they shall be applied to the purposes sanctioned by the Act of Parliament?—Yes.



*Wednesday, 19th June 1878.*

MEMBERS PRESENT :

Sir Walter Barttelot.  
Lord Frederick Cavendish.  
Mr. Goldney.  
Mr. Thomson Hankey.

Sir Henry T. Holland.  
Sir Henry Selwin-Ibbetson.  
Sir John Lubbock.  
Mr. Seely.

LORD FREDERICK CAVENDISH, IN THE CHAIR.

Mr. REGINALD EARLE WELBY, C.B., and Mr. CHARLES LISTER RYAN, called in; and further Examined.

CHELSEA HOSPITAL ACCOUNT.

The Right Honourable STEPHEN CAVE, a Member of the House, Examined.

*Sir Walter Barttelot.*

941. (To Mr. Cave.) MAY I ask you what is your position with regard to Chelsea Hospital?—As Paymaster General, I am the President of the Commission of Chelsea Hospital.

942. Who are the other Commissioners?—The other Commissioners are numerous; they comprise representatives from the War Office, the Treasury, and the Horse Guards; for instance, the Secretary of State for War, the Commander in Chief, three Members of the War Department, three Members of the Treasury, the Adjutant General, the Quartermaster General, the Deputy Adjutant General, the Inspector General of Recruiting, the Governor and the Lieutenant Governor of Chelsea Hospital; most of these, of course, change from time to time.

943. Then the Commission is, of course, a very important body?—Yes; there are the Secretary of State and the Commander in Chief, to begin with.

944. And I may say that it is also a very responsible body?—It is responsible, in fact, for the whole management, and for the whole expenditure of the funds of the hospital.

945. What absolute control have the Commissioners over these funds?—They have absolute control over these funds, because some of them meet once a week, and every item of expenditure goes before them before it is sanctioned; and there is also an audit or quasi-audit by them at the end of the financial year.

946. To whom do they render their Accounts?—A portion of the Account is rendered to the War Office; but all the Accounts may be said to be rendered to Parliament; because, of course, an Account of all the money which is voted by Parliament is rendered to Parliament after being audited by the Comptroller and Auditor General; and there is a new system, which has been only in force two years, under which the

*Sir Walter Barttelot—continued.*

Comptroller and Auditor General now audits the expenditure of the funds which are not voted by Parliament, namely, the Prize and Legacy Funds, &c., and that Account is rendered to Parliament every year.

947. From what sources are those other funds generally derived?—The principal source is the surplus of the Army Prize Fund. There is a large accumulation from time to time of unclaimed prize money, and of that a certain amount, I think it is 75,000 *l.* in Consols, is retained to meet any claims which may come upon it. There are constant claims upon this Army Prize Fund by men who have been out of the country, or have not known that prize money was being distributed. It is considered that 75,000 *l.* is enough to meet those claims, and the dividends beyond that sum are expended upon the general purposes of the hospital. That is the principal source of income. The next largest source is what is called the "Drouly Legacy," which amounts now to between 7,000 *l.* and 8,000 *l.*, besides 21,000 *l.* invested in land. This was left by Colonel Drouly, I think, somewhere about the year 1818, for the general benefit of the pensioners. There was something rather ambiguous in his will, and the consequence was that the Commissioners of that day went to Parliament for a declaratory Act to show how they were to expend this money. The first guiding Act is that of 5 Geo. IV., c. 107, in which directions are given to the treasurers of the hospital, if they please, to invest a sum of 10,000 *l.* in the purchase of land, and that was to be held by the Commission for the use and benefit of the hospital. About 20 years later than that, by an Act of 6 & 7 Vict., leave was given to the Commissioners to purchase any lands which, in the opinion of the Commissioners, might be beneficial to the hospital, or the possession of which might prevent

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CHELSEA HOSPITAL ACCOUNT—*continued.*Sir Walter Barttelot—*continued.*

prevent or remove any annoyance, and they might exchange or grant leases. In fact, they have full power over the legacy to invest it in any way they please, provided that it is generally for the benefit of the hospital. There are one or two small sums besides; there are the Stuart Legacy, the Ranelagh and De la Fontaine Legacies, and the Smith Legacy; those altogether amount probably to nearly 10,000 £.

948. In what way is that money which is not voted by Parliament usually expended?—It is rather difficult to say in what way it is usually expended, because a good deal of it is expended for purposes which arise from time to time. I will give an instance of that. The other day there was some land sold by the Metropolitan Board of Works in Tite-street, Chelsea, for building purposes, and it was considered very necessary to prevent building in a particular place, so that air and light might not be cut off from the Infirmary of Chelsea Hospital. That was considered to be a case which came within the words of the Act "for removing or preventing annoyance;" and negotiations were entered into for purchasing this site for the purpose of preventing building just in front of the infirmary. That is an instance of an expenditure which, of course, would only occur once. Then there is another case of a similar kind. About ten years ago, when I was Paymaster General before, there was a good deal of difficulty between the Office of Works and Chelsea Hospital; the two Departments did not get on very well, and there were constant complaints and disputes as to what ought or ought not to be done. At that time the Office of Works, of which Lord John Manners was First Commissioner, had the whole control of the Chelsea Hospital gardens and grounds, and there was a sum of, I think, 1,600 £ a year voted by Parliament for this expenditure. The Commissioners of the Hospital thought that if we could obtain the whole control of these grounds and gardens, we could get enough out of these private funds to support them, and that we could do it at very much less cost than it was done by the Office of Works, also getting rid altogether of the Vote. That was done with the full concurrence of the First Commissioner; and in the year 1868, I think it was, the whole of the gardens were placed under the control of the hospital, and we were left to carry them on at our own expense. The average expenditure since then has been about 1,000 £ a year; so that about 600 £ a year was actually saved in hard cash; and besides that the whole Vote was got rid of.

Chairman.

949. As I understand you, you consider that, under the provisions of the Trust and the Acts of Parliament, those funds that you have just named are applicable to the maintenance of the gardens?—Yes; we thought generally that the words "for the use and benefit of the hospital" carried it; and no objection was ever made to that.

950. Even to the extent of the erection of an iron fence surrounding the Chillianwallah Monument?—No doubt exception has been taken to this iron fence being placed around the Chillianwallah Monument. The Chillianwallah Monument was built by private subscription, and I

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CHELSEA HOSPITAL ACCOUNT—*continued.*Chairman—*continued.*

do not suppose that there could be anything much more for the benefit of the pensioners or more calculated to remove annoyance than the placing of this iron fence round; because this monument was really made a public nuisance. So that I think that is quite a case in point in which the money was spent properly. There are two or three other instances of that kind; for instance, objection was taken to the regilding of the Communion Service; it was nobody's business to do it if it was not our own; and yet it was clearly for the benefit of the pensioners that they should have a decent chapel. Of course these things may be put so as to appear doubtful at first, but it cannot be contended that these were improper applications of the funds.

Sir Walter Barttelot.

951. You had the authority of Parliament?—The authority for the expenditure of the Dronly Legacy no doubt is those two Acts of Parliament; and I think the Commissioners have taken these Acts pretty much as the model of what they ought to do with the other legacies which have been left to them. Unless there has been some special bequest, they have considered that the spirit of these Acts would apply to all bequests of a similar nature; but as a matter of fact every single item of expenditure is brought before the Commissioners at their meeting, and of course they judge for themselves whether that expenditure is within their powers or not.

952. What should you say was the security for the proper expenditure of that money?—The security in the first instance is the control of the body of Commissioners, who are supposed to be above suspicion, and who ought to be, if anybody can be, and who have no sort of private interest in the expenditure of this money. If it was entirely left to the Governor and Lieutenant Governor and the resident staff of the hospital, they might be biassed every now and then by something which they wanted to have done; but the Commissioners would be quite beyond any such bias. Besides that, there is the audit afterwards.

953. Do you see any objection to the preparation of a scheme by the Charity Commissioners for the expenditure of these Legacy Funds?—In the abstract I see no objection whatever to the Charity Commissioners preparing a scheme; but it seems to me to be unnecessary, for this reason; the funds are controlled by the representatives of high departments of the State, very much higher than the Charity Commissioners, and quite as likely to form a proper judgment as the Charity Commissioners would be; in fact, I should think more so, on account of their acquaintance with the circumstances of the hospital. They form, in fact, a sort of committee something like that which is now recommended to take the whole of the Estimates in hand; and I think they are far more likely to be good judges than anybody else would be.

954. They meet always on the spot, and they take into consideration, upon its own merits, each particular case that may arise?—Yes, that, no doubt, is the case.

Chairman.

955. But is there not this difference, that by Act of Parliament special powers are given to

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*Chairman—continued.*

the Charity Commissioners to revise the conditions of Trusts; whereas I presume the Commissioners of Chelsea Hospital, although a very high authority, are, like all other trustees, bound by the conditions of the Trust which they administer?—That, no doubt, is also true; but at the same time, looking at it merely from the point of view of whether it is a good thing to be done or not, although I do not for a moment question the right, it seems to me that the Commissioners, who are also appointed by Act of Parliament for the purpose of administering the funds, would be more likely to administer them judiciously than the Charity Commissioners would, who know nothing about the circumstances of the hospital. I would not for a moment say that the Charity Commissioners would not be fully within their right in drawing up such a scheme, and, of course, if it were drawn up and passed, we should be bound by it; but they would be obliged to draw a hard and fast scheme; and as regards many of those instances that I have mentioned, they could hardly draw up a scheme which would meet them, and we should then be precluded, perhaps, from spending money in a useful manner, because it was not exactly in accordance with the scheme drawn up; whereas the Acts of Parliament are sufficiently elastic to enable us to spend the money in this way.

956. I infer from your answer that, practically, the Commissioners have not felt, to any great extent, at a loss how to deal with these funds?—I have often heard the question discussed when there has been a proposal to do anything unusual. The other day, for instance, it was proposed that an iron safe should be made for the Communion plate. It was kept in a wooden box in the vestibule of the chapel, and some different organisation of the hospital made the place more insecure than it was before. It was proposed that there should be an iron safe, and, if I recollect rightly, an application was made to the Office of Works to furnish this iron safe; they said that the funds of their department ought not to be called upon to meet such expenditure. It was discussed at the Commission whether this came within the power of the Commissioners, and they decided that it was for the benefit of the hospital that the plate should not be stolen, and

CHELSEA HOSPITAL ACCOUNT—*continued.*

*Chairman—continued.*

therefore they at once expended the money on the iron safe, which was put up about a month ago. Under a scheme we should probably have been precluded from spending money for such a purpose, and no doubt when a department has once got into a routine it is very difficult to make them change it.

Sir Henry T. Holland.

957. Probably in any scheme that was drawn up, words equally elastic with those in the Act of Parliament might be used?—Yes; but if you do that you simply substitute the word "scheme" for "Act of Parliament," and leave us where we are.

Mr. Thomson Hankey.

958. Have you any reason to suppose that the Charity Commissioners would not have full power to sanction such an expenditure as that upon an iron safe for the safe custody of the hospital property?—I do not know enough about the Charity Commissioners' powers to be able to answer the question.

Sir Henry Selwin-Ibbetson.

959. The Charity Commissioners would have no power of interfering after they had drawn the scheme, would they?—That I cannot tell, because I know nothing about the Charity Commissioners.

Sir Walter Barttelot.

960. So far as you yourself, as Chairman, are concerned, you would rather that the matter went on as before instead of having this scheme provided by the Charity Commissioners?—I think that if you did provide such a scheme it would be merely for the sake of symmetry; and I do not very much regard symmetry, provided the thing is working well without it.

*Chairman.*

961. You have not found anything in the conditions of the Trust which impeded your doing all that you have thought necessary or advisable?—Nothing whatever; and at the same time I think it is sufficiently binding to prevent the money from being expended improperly.

[Mr. Cave withdrew.]

ARMY APPROPRIATION ACCOUNT.

The Hon. ROBERT HENRY MEADE, Mr. JOHN MILTON, C.B., and Mr. ALGERNON BERTRAM MITFORD, called in; and further Examined.

*Chairman.*

962. (To Mr. Mitford.) CAN you give the Committee any information as to the time at which the accommodation promised to the Comptroller and Auditor General at the War Office will be provided?—I presume that the noble Lord means when will Winchester House be ready; that will be in about two months.

963. We were informed in May of last year, that the War Office had before them certain plans for making Winchester House fit for the clerks who are to perform their duties there; but that the question had not been decided as to

*Chairman—continued.*

certain permanent alterations in the War Office; that it was possible that if one plan was adopted, Winchester House might be ready within two or three months; that if another plan was adopted it might take six months or more, and that the period at which Winchester House would be ready for the reception of the auditors lay between those two times. It appeared then that the accommodation for the Comptroller and Auditor General would be provided before the end of last year?—We hope to get into Winchester House in two months' time. There have been

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Mr. Milton, C.B.,  
and Mr. Mitford.

ARMY APPROPRIATION ACCOUNT—*continued.**Chairman—continued.*

been great delays in regard to it, over which we have had practically no control; but I am assured that it will be ready in two months time.

[Mr. Mitford withdrew.

964. (To Mr. Milton.) I presume that then the necessary accommodation will be provided for the officers of the Comptroller and Auditor General?—Yes, full accommodation. I believe it was the necessity for additional buildings for that purpose which caused the delay.

965. (To Mr. Meade.) In the evidence with respect to the contribution from Ceylon, there are a few dates deficient, which perhaps you can supply; can you inform the Committee the date at which the agreement which terminated in July 1874 was made?—It began in 1867, and was subject to revision on the 1st of July 1874.

966. In what year were the Ceylon rifles disbanded?—In the year 1873 the whole regiment of Ceylon rifles was disbanded, and the Treasury assented to an agreement which had been come to between the Colonial Office and the War Office, that for the period from the 1st of July 1873 to the 1st of July 1874, that is for the last year of that period, the old military contribution should be reduced from 16,00,000 rupees to 12,40,000 rupees; and the War Office letter conveying the sanction of the Treasury in this matter is dated the 27th of February 1874.

967. Then I understand that, as the result of the negotiations which ensued, it was agreed between the War Office and the Colonial Office that a provision should be made by which the pensions of the Ceylon Rifles should be paid directly by the Colonial Office?—Yes, and it was to be altogether irrespective of the military contribution.

968. But that owing to no agreement having been arrived at with respect to the general question, that part of the agreement was never incorporated in a formal document?—Quite so.

969. And that the Colony continued simply to pay its contribution of 12,40,000 rupees as before?—Yes.

970. (To Mr. Milton.) Do you agree in this statement?—Yes, entirely.

971. (To Mr. Meade.) I presume that no conclusion has been come to between the several

ARMY APPROPRIATION ACCOUNT—*continued.**Chairman—continued.*

departments as to this question?—No, nothing has been done; in fact I do not think the Secretary of State will have time to take the subject up until after the Session, when I propose to bring it before him.

972. Have the instructions of the Treasury with respect to the Honduras Contribution yet been received?—The Colonial Office wrote to the Treasury immediately after the last meeting of the Committee, but we have not had an answer yet.

Sir Henry Selwin-Ibbetson.

973. (To Mr. Welby.) The papers, I think, were brought under my notice soon after I went to the Treasury?—They were.

974. Are you aware of any steps having been taken subsequently upon them?—The Secretary of the Treasury entered into communication with the Secretary of State for War upon the subject, unofficially I believe, and is still in communication with the Secretary of State for War upon the subject. The result of that communication will of course take the form of official letters as soon as the communications come to a conclusion; but up to the present time no official letter on the subject has been written.

975. We have had no answer from Colonel Stanley since the interview which I had with him?—No reply has been made by Colonel Stanley.

*Chairman.*

976. Is there any reason why, until the question is settled, the sum of 28,984 l. which is now placed to suspense account, should not be paid into the Exchequer, leaving the old balance to be dealt with subsequently?—I can undertake that the Treasury will take that point into consideration and make it the subject of a formal minute which they can communicate to the Committee. At present I do not see any particular reason why that sum should not be paid over to the Exchequer; but I think it would be desirable first of all to communicate with the War Office and come to an agreement with them, so as to see that there are no practical objections to that cause.

[Mr. Meade withdrew.

## MILITARY FORCES LOCALIZATION ACCOUNT.

Sir Walter Barttelot.

977. (To Mr. Milton.) It appears that, out of the sum of 300,000 l. that was specially voted for buying a tactical station in the county of York, 150,000 l., or thereabouts, has been applied to purchasing more land near Aldershot; can you explain the circumstances in which that has occurred?—I had no notice that any question was going to be put to me upon this subject, and therefore I can only speak from my recollection. I was not aware that the Act stipulated in any way that the expenditure should be in the county of York.

978. That was the understanding, so far as I remember, in Parliament; and I think the statement made by Mr. Cardwell was that this

Sir Walter Barttelot—*continued.*

300,000 l. was to be applied to the purchase of a tactical station for the North of England, and that it would be most probably as near as possible to the city of York?—That may have been the intention; and the indefinite way in which you state it shows, I think, that it was open to the Secretary of State to alter that intention if he thought right. The matter is hardly one of account, because, as Accountant General, I am merely carrying out the orders of the Secretary of State when interpreting that Act with the consent of the Treasury.

979. Supposing that it is definitely laid down by an Act of Parliament that a certain sum of money is to be expended for a certain particular purpose,

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Mr. Ryan,  
Mr. Meade,  
Mr. Milton, C.B.,  
and Mr. Mitford.

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Mr. Ryan, and  
Mr. Milton, C.B.

**MILITARY FORCES LOCALIZATION ACCOUNT**  
—continued.

**MILITARY FORCES LOCALIZATION ACCOUNT**  
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Sir Walter Barttelot—continued.

purpose, you would not think yourself justified, would you, in asking the Treasury to give you their sanction to spend that sum for some other purposes?—It would be only under excessively exceptional circumstances that I should recommend the Secretary of State to do so.

980. Would not the proper course in a case of that kind be to come to Parliament for an estimate for the particular purpose for which you wished to apply that money, and not to go to the money voted for another purpose by Parliament?—If you ask me my opinion as Accountant General, I think, with all deference, that it is far beyond the position of the Accountant General to answer that question. I simply report to the Secretary of State that I have no item open in my books for the expenditure elsewhere than, say, at York, and request that he will take such measures with regard to Parliament or the Treasury as he deems right.

981. But you think that the two things would not be upon the same footing, viz., money voted by an Act of Parliament for a special purpose, and money voted in Committee of Supply for different purposes of war expenditure?—Certainly not; if the Act by which the grant was made out of the loan (it was a loan in this case) specifically stated that object and that locality, I should, of course, feel it my duty to call the attention of the Secretary of State to any other appropriation of that money.

982. You would consider the two cases, viz., money that was in the Act of Parliament for a specified purpose, and money that was voted in Committee of Supply for the general purposes of the War Department, to be on a totally different footing?—Certainly.

Sir Walter Barttelot—continued.

983. And, unless under some very peculiar circumstances, you would not for a moment venture to ask that the money which had been specially laid down in an Act of Parliament for one purpose should be applied to another?—When you say that I should not venture to ask such a thing, may I point out to you that you are speaking now of what the Secretary of State would do upon receiving my notice that there was no money for the purpose; and I am more particular in answering this question because I wish to avoid anything like comment upon the acts of my superiors. The attention of the Secretary of State was drawn to the fact of this expenditure at Aldershot being apparently different from the purpose laid down in the Act. Considerable discussion took place, both unofficially and officially, with the Treasury, and the Treasury considered, I presume, that as nothing was said about York or about the north in the Act, and as the good of the service required that the expenditure should be made conformably with the wish of the Secretary of State, that they might properly approve the arrangement.

Mr. Goldney.

984. The words of the Act are general, are they not?—They are.

Sir Henry Selwin-Ibbetson.

985. The result come to was arrived at after considerable correspondence with the War Office, was it not?—It was after a correspondence. I think officially one letter passed on each side, but a number of *pourparlers* passed.

**WAR OFFICE (CHARGES DEFRAIDED ON ACCOUNT OF INDIA)  
APPROPRIATION ACCOUNT.**

Chairman.

986. (To Mr. Welby.) Can you inform the Committee whether any decision has yet been arrived at with respect to the various unadjusted Accounts with India?—The Secretary of the Treasury has been in communication with the Secretary of State for India, and with the Secretary of State for War, and I am authorised to say that he has come to an agreement with the Secretary of State for India. I believe that up to the present time he has had no direct answer from the Secretary of State for War; but he expects shortly to have an answer. If the Se-

Chairman—continued.

cretary of State for War should agree with the Secretary of State for India, the agreement will then have to be reduced into an official form, which would be a matter of a very short time, and the Treasury would then lay it before the Committee.

987. Do you think that if the Committee adjourn the consideration of this Account for a week it is probable that that agreement may be ready?—Subject to what the Secretary of the Treasury would state, I should think a fortnight would be a safe time to allow.

**POST OFFICE APPROPRIATION ACCOUNT.**

Mr. STEVENSON A. BLACKWOOD, called in; and Examined.

Chairman.

988. (To Mr. Welby.) Has any progress been made with respect to the examination and settlement of London, District, and Provincial Post Office Accounts as regards Treasury authority?

Chairman—continued.

—No progress has been made with regard to it. That question, as I have already stated, has been referred to Mr. Mills and myself; but we have already two or three inquiries in hand which must

Mr. Blackwood.

POST OFFICE APPROPRIATION ACCOUNT—  
continued.

*Chairman*—continued.

must be finished before we can proceed with it ; but we understand that it is to have precedence as soon as those on which we are now engaged are terminated.

989. The same answer applies, I presume, to the question of the remuneration of the Sub-Postmasters and Receivers?—Upon that point there is a difference of opinion between the Postmaster General and the Treasury, which I think will have to be settled between the Postmaster General and the Treasury ; I ventured to mention before that it had been proposed that there should be a committee to consider that point ; but the heads of the Treasury and the Postmaster General have not yet decided upon the appointment of such a committee.

990. This question was pending when the Post Office Accounts were before the Committee last year, and the Committee were led to hope that some decision might be arrived at within a moderate time ; is there any reason to anticipate that any decision will be come to?—I think the only chance of coming to a satisfactory decision would be by letting the offices concerned meet in a committee, and make a report upon it.

991. But no progress has been made since last year?—No progress has been made.

992. With respect to the cost of the management of Government Annuities and Insurances, has any progress been made?—No progress has been made with respect to that question since the time when the Committee asked me about it some little while ago. There are various matters connected with it which are very technical, and of a somewhat difficult character ; and I do not think there is any chance of its being settled before the Committee breaks up.

993. But the consideration of it will be resumed as soon as practicable?—As soon as practicable.

994. (To Mr. Blackwood.) Has any decision been arrived at with respect to the apportionment of charges of premises jointly occupied for Postal and Telegraph Services?—No further steps have been taken in the matter, which, I believe, rests with the Treasury also. I think that it was almost arranged before the present Secretary of State for War left the Treasury that there should be a conference between himself and the Postmaster General on the subject ; and I have no doubt that his vacation of the seat of Secretary to the Treasury has delayed that.

*Mr. Goldney*.

995. Are all the payments of salaries to clerks charged to the Post Office now, or are they divided?—They are divided in due proportion wherever there is no separate establishment for the Telegraph Service.

996. That is not so in the small post offices, is it?—As a general rule there is a clerk appointed specially for Telegraph Service, or else the postmaster has an allowance, out of which he has to provide for the performance of the service.

997. But in the general run of the small post-offices throughout the country, where there is only one postmaster or mistress, they have to combine both services, have they not?—They

POST OFFICE APPROPRIATION ACCOUNT—  
continued.

*Mr. Goldney*—continued.

have ; but then they receive a portion of their remuneration in the shape of a distinct allowance, which is charged to the Telegraph Vote exclusively.

998. Do you contemplate making the same relative apportionment with regard to buildings?—It is a question at issue as to whether the Telegraph Vote shall be charged a proportion of the whole amount which has to be paid for rent, or whether it shall only be charged the additional amount which has been rendered necessary by the acquisition of the telegraphs.

999. Supposing that there is a staff in a large post office district exclusively for telegraphs, do you know the relative amounts that are paid under each head?—Yes, distinctly.

1000. Why do you think it ought not to be dealt with in the same way, with regard to the building which they both occupy, supposing the building to be rented?—If it is rented, there is now an apportionment of that rent between the Postal and the Telegraph Votes.

1001. Is it apportioned according to any specific scale, or arbitrarily?—In the case of buildings occupied since the acquisition of the telegraphs, it is according to the award of the Office of Works, which is based upon the area occupied by the respective services.

1002. But if the Office of Works deal with that, could not they deal with the other?—I believe it will be ultimately based upon their decision ; but the question is whether it shall be the additional expenditure which has been incurred on account of the Telegraph Service, or whether the Telegraph Service shall be charged with some portion of that which up to this time has been borne by the Post Office Vote.

1003. According to your view, you do not think it right to relieve the Post Office from any charge, but only to impose upon the telegraphs the additional expenditure made for telegraph purposes?—That is my own personal opinion, and I believe it is in accordance with the principles upon which the telegraphs were acquired ; but I believe a different view obtains at the Treasury.

*Sir Walter Barttelot.*

1004. How would you deal with the new building of the General Post Office in London, a large proportion of which, as I understand, is devoted to telegraph purposes?—There is a set-off against that in respect of some buildings which were formerly used by the telegraphs, and which are now used by the Post Office for its services.

1005. Then, in point of fact, so far as the London building is concerned, the Telegraph Service is accountable for the building which it now uses, and it has been charged to its account?—Roundly, I think it may be said that it has been so ; it is not a very accurate apportionment.

*Sir Henry Selwin-Ibbetson.*

1006. The buildings which formerly belonged to the Telegraph Service are now used for postal purposes?—Yes.

1007. But

*Mr. Welby, C.B.,  
Mr. Ryan,  
Mr. Milton, C.B., and  
Mr. Blackwood.*

19 June 1878.



Mr. Welby, C.B.,  
Mr. Ryan,  
Mr. Milton, C.B., and  
Mr. Blackwood.

19 June 1878.

POST OFFICE APPROPRIATION ACCOUNT—  
*continued.*

Sir John Lubbock.

1007. But are there not cases in which the buildings which were formerly used for the Postal Service alone are now used for the Postal and Telegraph Services?—Yes, a good many.

1008. In those cases there would be no additional building, and therefore, as I understand you, there would be no charge made to the Telegraphs?—No; it is contended upon behalf of the Telegraphs that there ought to be no charge; that the principle upon which the Telegraphs were acquired was, that the State was already in possession of the accommodation which could be used for the Telegraph Service, and that no charge should be made.

1009. Still, part of the building is clearly used for Telegraph Service, and surely there ought to be some allowance made on that account?—That is the question which is at issue.

POST OFFICE APPROPRIATION ACCOUNT—  
*continued.*

Mr. Seely.

1010. Who has the power of settling the question at issue?—It would rest ultimately with the Treasury, I presume.

1011. (To Mr. Welby.) Do you think that there is any probability of an early decision on the part of the Treasury with regard to that question?—I believe I am right in saying that the Treasury incline to the opposite view, namely, that the cost of the two services should be fairly apportioned between them; but the Post Office to whose opinion very great respect is due in regard to the management of the business, taking a different view, it is a question really remaining to be settled between the Postmaster General himself, the Chancellor of the Exchequer, and the Secretary of the Treasury.

1012. Is it likely to be settled soon?—The Secretary of the Treasury is now about to carry out his predecessor's intention of himself conferring with the Postmaster General upon that point.

POST OFFICE PACKET SERVICE.

Chairman.

1013. (To Mr. Blackwood.) Has any progress been made with reference to the arbitration with the Royal Mail Steam Packet Company?—The accounts are still under investigation, and I am unable to specify the exact date at which that examination will be concluded.

Sir Henry T. Holland.

1014. How far do the Accounts that are under examination go back?—From 1871 to 1873 and 1874.

POST OFFICE TELEGRAPH SERVICE.

Chairman.

1015. (To Mr. Blackwood.) Has the Treasury authority yet been received for the employment of certain boy messengers?—The question has now been settled. The Treasury authority has been received for the establishment which was

Chairman—continued.

proposed by the Postmaster General, under which those boys will either be employed, after passing the necessary examination, or discharged.

1016. The question is then concluded?—It is concluded.

POST OFFICE TELEGRAPHS CAPITAL ACCOUNT.

Chairman.

1017. (To Mr. Blackwood.) Can you inform the Committee of the cause of the prolonged delay in the submission of the agreements with the Greenock and Ayrshire, and Leven and East of Fife Railways, to the Treasury for sanction?—The causes are manifold. In the first place, the Greenock and Ayrshire Railway has been purchased by the Glasgow and South Western Railway Company, and the provisional agreement which had been made with the Greenock and Ayrshire Railway Company has now to be carried out with the Glasgow and South Western Railway Company. That agreement is still before counsel with the view to a conference between the railway company and the Post Office authorities on the construction of the shifting clauses.

1018. Has any progress been made since the

Chairman—continued.

question was before the Committee last year?—Yes; the agreement has been received from the company and put before the Post Office counsel, I think, some two or three times.

1019. And it is being proceeded with as rapidly as possible?—Yes.

1020. What have you to say as to the agreement with the Leven and East of Fife Railway Company?—There the causes of the delay are similar, to a great extent, to those in the case of the Greenock and Ayrshire Railway, the Leven and East of Fife Railway having been purchased by the Caledonian Railway Company. The draft of the Leven and East of Fife deed, as revised by the Post Office counsel, is now before the company's solicitors, and we hope to get it back very shortly.

1021. You hope that this question will be settled

POST OFFICE TELEGRAPHS, &c.—*continued.**Chairman—continued.*

settled before long?—I hope it will be settled before the next report on the Capital Account is presented. I may perhaps be permitted to observe, with reference to the statement contained in para. 75 of the Report of the Committee of last Session, to the effect that some loss resulted to the public from protracted delay in concluding such agreements, that no loss is involved by the delay. The agreements are not for the purchase of undertakings, on the amount of which interest might be charged, but for the maintenance, &c. of the wires. The lines are worked under heads of agreement, and payment is regularly made of such sums as may be due. The delay which is taking place is solely in the embodiment of these heads of agreement in legal documents.

*Sir Henry T. Holland.*

1022. The company that purchased would be in the same position with regard to these arrangements as the company that was bought up, would they not?—I assume that they would.

1023. Is it open to them to make new objections; I fail to see why the fact of a company being purchased should delay the agreement?—That was only one of the causes of the delay and the preliminary cause. It was natural, I think, that, if the property changed hands, the solicitors of the new proprietors should take time to go fully into all the questions involved.

POST OFFICE TELEGRAPHS, &c.—*continued.**Chairman.*

1024. (To Mr. Ryan.) Do I understand that the Comptroller and Auditor General is satisfied with the adjustment of the Account between revenue and capital as regards the payments diverted from revenue up to the 31st of March 1873?—There is no question whatever that the whole amount charged by the Post Office as expenditure in the period from the 1st of August 1868 to the 31st of March 1877 has been expended. The only point was whether the whole of the amount was spent before the 31st of March 1873, a point which the Post Office, with the concurrence of the Treasury, have settled by an estimated apportionment during the years 1874–75 and 1875–76, to which we see no objection; but, inasmuch as we have not been able to verify the actual sums, and could not have done so without a re-examination of the whole of the Capital Accounts from the commencement, we bring it forward simply as a matter which it is not worth the cost of the labour to ascertain definitely; it is a question of classification only.

1025. Classification as to the years in which the expenditure took place?—Yes. The apportionment in the present year has been made upon an estimate. There was a certain sum outstanding, and it had to be dealt with; it was apportioned as the Post Office thought it could best be apportioned. We see no *primâ facie* objection to the course pursued, but we do not certify it as being absolutely correct.

Mr. Welby, c.B.,  
Mr. Ryan,  
Mr. Milton, c.B., and  
Mr. Blackwood.

19 June 1878.

## NAVY APPROPRIATION ACCOUNT.

*Chairman.*

1026. (To Mr. Welby.) Has the Treasury sanction been given to the expenditure on the "Conqueror"?—No, the Admiralty have not yet made the application. I learn by private communication from the Admiralty, that they

*Chairman—continued.*

found out that they had a number of other cases of a similar character which they desired to bring before the Treasury together, and those have not as yet reached the Treasury.



Wednesday, 3rd July 1878.

MEMBERS PRESENT:

Sir Walter Barttelot.  
Lord Frederick Cavendish.  
Mr. Cubitt.  
Mr. Goldney.

Mr. Thomson Hankey.  
Sir Henry T. Holland.  
Mr. Seely.  
Sir Henry Selwin-Ibbetson.

LORD FREDERICK CAVENDISH, IN THE CHAIR.

Mr. REGINALD EARLE WELBY, C.B., Mr CHARLES LISTER RYAN, and Mr. JOHN MILTON, C.B., re-called; and further Examined.

WAR OFFICE (CHARGES DEFRAIDED ON ACCOUNT OF INDIA)  
APPROPRIATION ACCOUNT.

Chairman.

1027. (To Mr. Welby.) THE second paragraph of the Report of the Comptroller and Auditor General is as follows: "From the statement annexed to the Appropriation Account, it will be seen that the total amount claimed by the War Office in respect of these charges from the 1st April 1870 to the 31st March 1877, amounts to 685,050*l.* 3*s.* 3*d.*, being 15,050*l.* 3*s.* 3*d.* in excess of the sum voted by Parliament; but this amount is necessarily subject to adjustment after the examination of the War Office claim by the Auditor of the Home Accounts of the Government of India. And it would follow that if the objection of the India Department to any sum is substantiated and admitted, this amount would, as an Army Service not chargeable to India, be properly admissible against the first open Army Vote." Will the arrangement which we understand has just been made with respect to the Accounts so long open between India and the War Office in any way affect this sum of 15,050*l.* 3*s.* 3*d.*?—That arrangement, contemplating the closing of the Account between the War Office and the Treasury on the one side, and the India Office on the other, puts an end to the condition in the latter part of this paragraph, that if any sums should be disallowed, further steps would have to be taken with regard to them. At the present moment, as I understand it, the whole of the expenditure has been voted, with the exception of a sum of 15,000*l.*; and that sum of 15,000*l.* is the only sum outstanding which will have to be sanctioned by Parliament, subject, of course, to any further remarks that the Comptroller and Auditor General may make hereafter.

1028. Then I presume that this arrangement having been arrived at at so late a period of the Session, it is scarcely probable that the Committee will be able to receive any further information upon the subject during the present Session?—The arrangement having been only just settled, the first step will be to communicate it to the Audit Office; and the Comptroller and Auditor General, who has not yet seen the

Chairman—continued.

arrangement, would be the person to say whether he thinks it could be possible to make any Report this Session, or whether the proper time would not be at the beginning of next Session.

1029. Would there be any serious objection to this excess of 15,050*l.* 3*s.* 3*d.* standing over until next Session?—If the Comptroller and Auditor General wishes to make any further remarks upon these charges, and if he should be unable to do so before the Committee rose, I think it would be better to leave the matter open for adjustment at the commencement of next Session.

1030. (To Mr. Ryan.) On page 5 of this Account there is a "Statement showing Home Charges of Her Majesty's Troops serving in India on account of Effective and Non-Effective Services for the years 1870-71 to 1876-77; also the amount advanced by India to meet the same"; should not that heading be corrected by leaving out the words "and Non-effective Services"?—It should. The heading was copied from last year's Account, and "Non-effective Services" is an error which has crept in.

Mr. Seely.

1031. (To Mr. Milton.) In the first Report of the Public Accounts Committee in 1877, at page 114, it is stated that the amount claimed by the War Office in excess of the sum advanced by India is 45,159*l.* 13*s.* 11*d.*; and in the Appropriation Account (War Office Charges defrayed on account of India) in the following year, the balance claimed is 412,246*l.* 11*s.* 8*d.* In the year 1876-77 the total charges are put down at 679,711*l.* 7*s.* 9*d.*; and India paid 400,000*l.* on account. Now I cannot make these two balances agree. The balance due after the 400,000*l.* was paid would be 279,711*l.* 7*s.* 9*d.* Those two sums, the 45,159*l.* 13*s.* 11*d.*, and the 279,711*l.* 7*s.* 9*d.*, added together amount to 324,871*l.* 1*s.* 8*d.* Then there seems to me to be a discrepancy between that amount and the 412,246*l.* 11*s.* 8*d.*; can you explain that discrepancy?—The Statement you are speaking of is not

Mr. Welby, C.B.,  
Mr. Ryan, and  
Mr. Milton, C.B.

3 July 1878.

WAR OFFICE—APPROPRIATION ACCOUNT—  
*continued.*Mr. Seely.—*continued.*

not one rendered by the War Office; if I can compare it at all with the one you are speaking of, of course I should be happy to assist you.

1032. I can explain to you how the discrepancy arises, and then, perhaps, you can explain to the Committee the reason of that discrepancy. In the year 1874-75, in the former Account, the difference of number of men on passage with regiments is put down at 36,297 *l.* 15 *s.* 4 *d.*; and, in the last Account furnished, we have for the year 1874-75 this item put down as 73,265 *l.* 5 *s.* 4 *d.* In the first Account for 1874-75, there is a charge of 28,000 *l.* for cavalry dépôt at Canterbury, and in 1875-76 a similar charge of 28,000 *l.*; but in this last Account which has been furnished to us, these said charges are put down as 52,207 *l.* 8 *s.* and 54,200 *l.* 12 *s.*?—With regard to the two last items you have mentioned, attention is drawn to them in the Comptroller and Auditor General's Report before you, and it is stated that when the War Office Account was sent in, estimated sums only were returned, as the Accounts had not been finally made out at the War Office for that dépôt, and we would not delay our annual claim until it was made out. That accounts for some 50,400 *l.* My answer regarding the other sum must be the same, viz., that as our books are made up from time to time, additional sums come into the course of charge for the year, and are included in any corrected Accounts.

1033. Then do you mean to say that you had to correct the Account of 1874-75 last year?—It appears so from this statement made by the Comptroller and Auditor General, but we are not responsible for this. I may say that I will get any information I can from the War Office to explain the variation of figures in the two Accounts. I find on reference, that we found out after rendering the account in the India Office, we had given India credit for too many men as having returned to this country; and at their suggestion we made this addition to our claim.

Chairman.

1034. Is it not all explained in the 17th paragraph of the Report of the Comptroller and Auditor General: "The difference between the amounts claimed for the year 1874-75 and 1875-76, as compared with the Statement appended to my last year's Report, is caused by additions which have since been made to the claims for those years?"—Yes.

Mr. Seely.

1035. But I want to know how it was that there was such a large difference between the two amounts, that is to say, that there was so much added to the amount for 1874-75 in the year 1877-78?—I will ascertain that, and let the Committee know.

1036. Are we to understand that these Accounts which are presented to us are estimates, and not actual payments?—No, they are actual charges, with the exception of two items stated on the Accounts to be estimates. In rendering these Accounts we stated that these two items were estimated charges only. My answer upon this point applied only to the cavalry dépôt at Canterbury, as detailed in the Comptroller and Auditor General's Report.

Q.9.

WAR OFFICE—APPROPRIATION ACCOUNT—  
*continued.*Mr. Seely.—*continued.*

1037. The cavalry dépôt at Canterbury, and the number of men on passage with regiments, are both erroneous, are they not?—I hope that both are correct; they have been subsequently modified.

1038. The number of men on passage with regiments is, in the first Account, only about half what it is put down in the last Account; if, therefore, that be the case with regard to this item, is there any reason why the Committee should not fear that it may be the case with regard to other items?—I cannot answer the question as to what reason there is to fear it.

1039. It appears from this Account that this sum of 36,297 *l.* 15 *s.* 4 *d.*, which is put down in the Report of the Committee on Public Accounts of last year for the year 1874-75, was only an estimated amount of what would be the charge?—No, that is not so; it was the charge as entered in our books up to that date.

1040. But how did you get it there?—Through the various sub-accounts. I must again ask the honourable Member to remember that he is not speaking of Accounts at all; he is speaking of two statements made up, not by the War Office, but, as I understand, by the Comptroller and Auditor General. At the same time, I will get every information in my power from the War Office to explain the apparent discrepancy.

1041. (To Mr. Ryan.) Appendix, No. 12, to the First Report of the Public Accounts Committee of 1877, was a Paper handed in by you; I beg to ask you whether or not that Paper is founded upon statements received from the War Office?—This Paper was compiled in the Exchequer and Audit Department, not as an Account, but as a statement, in order to show what the actual state of the case was with reference to the advances made on behalf of India by the War Office, and the repayments by India, so that something like a statement of the balance remaining on the Account should be shown. The accuracy of the figures given in the statement has been ascertained as far as possible from the War Office books, from which alone the figures could be taken. The Comptroller and Auditor General cannot bind himself to this as an Account in any shape; he only heads it as a statement; but it is accurate as far as the entries in the War Office books are concerned. The books have been re-adjusted by journal entries and other alterations, and hence the variations between the two statements. They are only approximate statements, and are only printed in order that Parliament might be able to ascertain approximately from them whether we owed money to India or India owed money to us.

Chairman.

1042. (To Mr. Milton.) It is a statement, is it not, of the claims which have now been settled by the decision of the Treasury?—Yes.

Mr. Seely.

1043. It may seem a matter of no great moment, but still I think that as far as possible when Accounts are presented to this Committee they should be accurate. Now, in the first Report of the Public Accounts Committee of last year, dated May 1877, that item of 9,000 *l.* and odd for the discharge dépôt at Chichester is put down under the head of "Victoria Hospital, Netley";

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Mr. Welby, C.B.,  
Mr. Ryan, and  
Mr. Milton, C.B.

3 July 1878.

Mr. Welby, C.B.,  
Mr. Ryan, and  
Mr. Milton, C.B.

3 July 1878.

WAR OFFICE—APPROPRIATION ACCOUNT—  
*continued.*

Mr. Seely—continued.

Netley"; why was it transposed?—It appears to me that just the contrary is the case. This was an error in the Audit Office Statement. The discharge dépôt at Chichester has been abolished ever since 1872-73. The 9,423 l. ought to have been put into the next column in Mr. Ryan's Statement of 2nd May 1877. But, again, I must repeat that we at the War Office knew nothing of these two statements, and I am not responsible for them.

WAR OFFICE—APPROPRIATION ACCOUNT—  
*continued.*

Mr. Seely—continued.

1044. In the column for the hospital at Netley there is a sum of 6,000 l. and odd in that year, and it is put down for the supplies at Netley Hospital beyond the stoppage in the next year; I understand you to say that you knew nothing about it?—I say that these statements were not made by us; but this item also has been misplaced by the compiler of the Audit Office statement.

ARMY APPROPRIATION ACCOUNT.

On Paragraph 14.

Chairman.

1045. (To Mr. Milton.) Has the sanction of the Treasury been received to the expenditure of the sum of 2,714 l. 10 s., for the purchase of land at Malta?—No; the Treasury decision is that it shall be excluded from the Accounts now before the Committee and brought into course of adjustment, when duly vouched, in the Accounts of the current year. It will be therefore submitted to as a deduction.

On Paragraph 31.

1046. Has any decision yet been come to with respect to the contributions from Honduras?

On Paragraph 31—*continued.*

Chairman—continued.

—We are quite prepared to hand over that amount as Exchequer Extra Receipts, namely, 28,984 l. 8 s. 10 d. We at first wished to retain the 7,333 l. 3 s. 8 d. on our books as an unsatisfied claim; but the better course appears to be to hand over at once to the Chancellor of the Exchequer, as an extra receipt, the whole of the sum of 28,984 l. 8 s. 10 d., which we shall proceed to do on the decision of the Committee.

1047. Has any determination yet been come to with respect to the amount of the contribution annually payable by Honduras?—No further step has been yet taken as to that.

NAVY APPROPRIATION ACCOUNT.

On Paragraph 3.

Chairman.

1048. (To Mr. Welby.) Has the sanction of the Treasury yet been applied for and been given to the expenditure of the sum of 201 l. 2 s. 10 d. under Vote 6, Sub-head E., "Wages of Artificers in respect of certain Expenses incurred in the conversion of Her Majesty's Ship "Conqueror" into a Training Ship for the Marine Society"?—I mentioned to the Committee the last time they met, that the Admiralty had not applied for the

Chairman—continued.

Treasury sanction to this expenditure, because they wished to include it along with certain other services of a similar kind, for which they thought the Treasury sanction was necessary. But since that time, and indeed only this morning, we have received at the Treasury a letter asking for the Treasury assent to this particular charge; and I am authorised to state that the Treasury assent will be given to it immediately.

CONSOLIDATED FUND ACCOUNT.

On Paragraph 9.

Chairman.

1049. (To Mr. Ryan.) Has any decision yet been come to by the Treasury with respect to the examination of the securities for loans made by the Public Works Loan Commissioners to local bodies?—The Comptroller and Auditor General received a letter from the Treasury on the 24th of June, in which they state that "My Lords do not think that it would be desirable that the Comptroller and Auditor General should undertake any responsibility in regard to the sufficiency of legal deeds which give effect to the contracts entered into by the Commissioners. It appears to the Treasury that the legal authorities to

Chairman—continued.

whom the preparation of these deeds is confined must alone be answerable for their work. It might, however, be useful if you were to satisfy yourself that the deeds which the Commissioners directed to be drawn were duly drawn and are in existence; and my Lords would therefore suggest that you should call for the inventory of the securities, and verify the fact that the deeds, or a sufficient number of them, are forthcoming."

1050. (To Mr. Welby.) Have any steps been taken, as you anticipated upon the last occasion, to enable the Local Government Board to ascertain whether or not the money advanced by the Public

## CONSOLIDATED FUND ACCOUNT.

On Paragraph 9—*continued.**Chairman—continued.*

Public Works Loan Commissioners is expended on the purposes for which it is advanced?—I mentioned that the Treasury were about to insert in the Public Works Loan Bill a clause increasing the power of the Local Government Board, under the 36th Section of the Act of 1875, the Public Works Loan Consolidation Act. That clause was inserted in the Bill, and has now become law.

1051. Has the Treasury decided whether or not it is necessary for the Audit Office to take any action with respect to this point?—After a communication from the Local Government Board, in which the Local Government Board advanced what they considered to be strong reasons against its being necessary for them to communicate with the Comptroller and Auditor General upon the subject, the Treasury agreed with the view taken by the Local Government Board, that it was not desirable that the Comptroller and Auditor General should interfere.

1052. (To Mr. Ryan.) Have you the Treasury letter upon the subject?—The Treasury letter on the point just alluded to, says: "I am to inform you that my Lords have been in communication with the Public Works Loan Commissioners, and with the Local Government Board, on the subject of the 36th section of the Public Works Loans Act, 38 & 39 Vict. c. 89, on the application of moneys lent by the Commissioners, and that they have caused a provision (section 4) to be introduced into the Public Works Loans Money Bill recently passed into law, which will remove the difficulties encountered by the Local Government Board in giving effect to the said section of the Act of 1875." I may observe that that may be quite sufficient for the Local Government Board, but it does not touch the question whether or not it should be the duty of the Comptroller and Auditor General to ascertain from the Local Government Board that these requirements have been fulfilled. I gather now, from what Mr. Welby has said, that the view of the Treasury is that the Comptroller and Auditor General should be absolved from that; but this letter does not convey it. (Mr. Welby.) The Comptroller and Auditor General has before him at the present moment a letter which contains the decision. Perhaps I may be allowed to read it. The letter to the Comptroller and Auditor General encloses a copy of the letter to the Local Government Board, which conveys the Treasury decision. The letter to the Local Government Board, dated the 4th of May, runs as follows: "I am directed by the Lords Commissioners of Her Majesty's Treasury to transmit to you herewith a copy of a letter, dated the 19th January 1877, from the Comptroller and Auditor General, relative to the correspondence which has taken place between your department and the Exchequer and Audit Office, as to Section 36 of the Public Works Loans Act, 1875, and I am to inform you that my Lords accept the views of your department as to the distinction between the duties imposed upon the Local Government Board and the Audit Office by the Public Works Loans Act, 1875. My Lords have read the very valuable observations at pp. liv–lix of your Board's Report, 1876–77, on Loans to Sanitary Authorities; if, in the succeeding Reports, in-

0.9.

## CONSOLIDATED FUND ACCOUNT.

On Paragraph 9—*continued.**Chairman—continued.*

formation could be given showing the result of the action taken by your Board in respect of local loans of every kind; pursuant to Section 36 of the Public Works Loans Act of 1875, my Lords think that the intention of Parliament would be satisfactorily answered. My Lords do not contemplate any such sudden and exhaustive survey as might call for an addition to your establishment; but such occasional, but pretty general, inquiries and notices as your travelling officers can undertake, with no very serious addition to their ordinary duties, wherever something seemed to be *prima facie* wrong, a more formal and stringent investigation might be instituted." A copy of that letter was enclosed in a letter of the same date to the Comptroller and Auditor General, which was as follows: "In reply to Mr. Treherne's letter of the 19th January 1877, relative to the correspondence which has taken place between your department and the Local Government Board, as to concerted action under Section 36 of the Public Works Loans Act, 1875, I am directed by the Lords Commissioners of Her Majesty's Treasury to transmit to you herewith, for your information, a copy of a letter which my Lords have this day caused to be addressed to the Local Government Board on the above subject, and I am to thank you for your attention to the question brought before you by my Lords. I am to state that, at least for the present, my Lords are satisfied to leave to the Local Government Board exclusively such action as is required to be taken under "The Public Works Loans Act of 1875."

Sir Henry T. Holland.

1053. Therefore you say that the letter of the 24th of June must be read with reference to the prior correspondence?—Certainly; the two letters must be read together. The position I think is this, that the Treasury concurred with the Local Government Board in the view that the powers conferred upon the Local Government Board by the 36th Section of the Act were insufficient, and therefore they amended the Act to increase the powers of the Local Government Board; but they thought that that was sufficient, and that it was not necessary for the Local Government Board to inform the Audit Office what steps the Local Government Board had taken under their increased powers to insure a proper application of the monies advanced to the local authorities.

On Paragraph 10.

1054. With reference to the West India Islands Relief Commissioners' Accounts, I observe that in a letter to the Auditor General, of the 8th of January 1878, it is stated that the Treasury "are in communication with the West India Islands Relief Commissioners, with a view to the recovery of such sums as it may be advisable to accept in composition for the loans, amounting to 12,450 £. on the security of estates in Dominica, and likewise with a view of ascertaining the exact position of each loan with which those Commissioners are charged, and of which any portion is still outstanding, so that Parliament may be asked, as in the case of some of the Irish and other old loans, to remit what is absolutely irrecoverable;" has any answer been received

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Mr. Welby, C.B.  
Mr. Ryan, and  
Mr. Milton, C.B.

3 July 1878.

Mr. Welby, C.B.  
Mr. Ryan, and  
Mr. Milton, C.B.

3 July 1878.

### CONSOLIDATED FUND ACCOUNT.

#### On Paragraph 9—*continued.*

*Chairman—continued.*

from the West India Islands Relief Commissioners?—Yes, an answer has been received from the West India Islands Relief Commissioners, and, as far as Dominica is concerned, the question is at an end. The sums offered have been accepted, and the debt is compounded; but of course it requires the assent of Parliament; at all events, the Treasury intends to ask the assent of Parliament to the composition, and that assent would have been asked this Session, but that there are some other outstanding questions which are not yet concluded, and it is proposed to include them

### CONSOLIDATED FUND ACCOUNT.

#### On Paragraph 9—*continued.*

*Chairman—continued.*

all in one Bill, which will probably be brought in early next Session.

1055. Then they will not deal with the question of Dominica alone this Session?—Not so far as getting the assent of Parliament to it is concerned.

1056. And the questions as to other loans are still outstanding?—The reason for the other loans not having been settled is, that it is thought desirable to include the whole in one proposal to Parliament.

### CIVIL CONTINGENCIES FUND ACCOUNT.

*Chairman.*

1057. (To Mr. Welby.) Have you any further information to give to the Committee with respect to the sums owing by the Dominican Government?—No further information has been received from the Foreign Office with respect to the claim against St. Domingo. By inquiry made at the Foreign Office yesterday, I learn that

*Chairman—continued.*

they have received no answer to the last application made to them by the Treasury, which they sent out to St. Domingo. There has been a statement in a newspaper that some further arrangement has been made by the consul at St. Domingo, but the Foreign Office have received no confirmation of that.

### NAVY APPROPRIATION ACCOUNT.

#### On Paragraph 18.

*Chairman.*

1058. (To Mr. Ryan.) Have any arrangements been made for supplying the officers of the Comptroller and Auditor General's Department with the necessary accommodation at the Admiralty to enable them to conduct the detailed audit now ordered by the Treasury?—No such arrangements have been made. The only communication which the Comptroller and Auditor General has received is one from the Admiralty, which is dated the 7th of May, in which they transmitted

*Chairman—continued.*

a copy of a letter to the Treasury, stating that the Lords of the Admiralty "are unable to find accommodation for the gentlemen to be employed upon the test examination of the Accounts for the Navy Services, there not being a spare room in any of the very unsuitable buildings in which the department is at present housed." This holds out no hope, as far as I can see, that we shall obtain accommodation at all at the Admiralty.

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A P P E N D I X.

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# A P P E N D I X.

## Appendix, No. 1.

PAPER handed in by Mr. *Welby*, 10 April 1878.

### LOANS TO COLONIAL DOCK COMPANIES.

	Anglo-Maltese Hydraulic Dock Company.		Whampoa Dock Company, Hong Kong.			
			First Loan of £. 5,000.		Second Loan of £. 6,000.	
Amounts Outstanding, in Arrear, on 31 March 1877:	£.	s. d.	£.	s. d.	£.	s. d.
Principal - - - - -	1,000	- -	342	3 8	322	10 10
Interest, viz.: - - - - -	* 735	3 10	77	16 4	97	9 2
* On 19,000 L, 1 January to 18 May 1876, the date of the repayment of the second instalment - - - - -	288	13 8				
On 18,000 L, 19 May to 31 December 1876 - - - - -	446	11 2				
£. 735	3 10	Third instalment - - - - -				
Amounts of the Repayments in 1877-78:						
Principal - - - - -	1,000	- -	342	3 8	322	10 10
Interest - - - - -	735	3 10	77	16 4	97	9 2
		Received in October 1877 by Her Majesty's Paymaster General.		† Received by Principal Accountant, Hong Kong, on 2 May 1877 -		As at t.
Amounts Outstanding on the 31 March 1878:						
Principal - - - - -	17,000	- -	2,261	14 2	2,026	2 2
Interest - - - - -	710	9 3	67	11 -	87	15 8
† On 18,000 L, 1 January to 5 October 1877, the date of the repayment of third instalment - - - - -	548	7 8				
On 17,000 L, 6 October to 31 December 1877 - - - - -	162	1 7				
£. 710	9 3	Fourth instalment of 1,000 L, due 31 December 1877, not yet repaid.		Due 31 March 1878; usually received in Midsummer quarter of each year, at Hong Kong.		Due 31 March 1878; usually received in Midsummer quarter of each year, at Hong Kong.
		Due 31 December 1877, not yet repaid.				

Ledger Branch, Admiralty  
(Adjutant General's Department), 2 April 1878.



## Appendix, No. 2.

PAPER handed in by Mr. White.

Appendix, No. 2.

## LOAN FOR DEFENCES.

						£.
Voted	-	.	-	-	-	7,460,000
						£.
Expended to 31st March 1877	-	-	-	-	-	7,314,853
Required to complete	-	-	-	-	-	136,500
						7,451,353
Probable Balance (unexpended)	-	-	-	-	-	£. 8,647
19 March 1878.						C. H. Nugent.

## Appendix, No. 3.

Appendix, No. 3.

## EFFECTIVE CHARGES PAID IN ENGLAND OF HER MAJESTY'S TROOPS SERVING IN INDIA.

## CLAIM OF THE WAR OFFICE AGAINST THE INDIA OFFICE.

TREASURY MINUTE, dated 2nd July 1878.

THE Chancellor of the Exchequer reads to the Board the 127th paragraph of the First Report of the Committee on Public Accounts, presented to Parliament in the Session of 1877.

The Committee, commenting upon the account of charges defrayed by the War Office on behalf of India, remark that the evils to which they call attention are but the natural results of the state of arrears into which the accounts between India and the War Office have fallen. They add that they cannot too strongly express their opinion that it is absolutely necessary that an early agreement should be come to, both as to the amount for past years and also as to the basis of charge for the future.

The Chancellor of the Exchequer states that he concurs with the Committee. Delay, protracted over a period of eight or nine years, in adjusting accounts of public expenditure, brings the administration of Her Majesty's service into discredit, and is but too likely to lead to irregularity. Since the presentation, therefore, of the above-mentioned Report to Parliament, he has used his best endeavour, in conjunction with the late and present Financial Secretaries of the Treasury (Colonel Stanley and Sir H. S. Ibbetson), to lay down the basis of an arrangement which would be acceptable both to the Secretary of State for India in Council and to the Secretary of State for War, and which would enable the Board of Treasury to inform Parliament, through the Committee on Public Accounts, that past accounts had been closed, and that measures had been taken for adopting such a principle of adjustment in future as would prevent the recurrence of the protracted discussion and fruitless negotiation attending adjustment upon minute investigation of actual charges.

The Board are well aware of the difficulties which are invariably encountered in the transaction of business between the Imperial and the Indian Governments. They are quasi-independent powers; and there is no generally accepted definition of Imperial, as compared with Indian services; there is, therefore, a disposition on the part of the authorities on each side to advance claims which the other side cannot accept, while no mediator

mediator has been provided whose decision between the conflicting parties must be final. The question at issue requires, moreover, the most careful consideration on the part of the Board, because there is an impression in the public mind that the Imperial Government demands too much from India. This impression is justified or not, accordingly as the theory of Imperial duty to India is extended or contracted. It is formed, no doubt, in great measure on the evidence given by Indian witnesses before Committees on Indian affairs, and it may be questioned whether a complete exposition of the relations between the two Governments would not modify it; there can, however, be no doubt of its existence, and perhaps a better general statement of the question cannot be found than that contained in the following extracts from the Report of the Select Committee of the House of Commons, appointed to inquire into charges payable in this country for which the revenues of India are liable:—

“1. Your Committee have received an impression . . . that charges have in some instances been imposed upon India which ought to have been borne by England. Your Committee have, however, been assured by various witnesses that a very general desire prevails among the different English Departments not to throw any charge upon India improperly. Your Committee cannot too strongly insist on the importance of securing for India strict impartiality in all her financial arrangements with this country, and they agree in the opinion which was very emphatically expressed by the Marquis of Salisbury, that the most effectual way of securing financial justice for India is for the House of Commons to be constantly watchful on her behalf.

“2. Your Committee cannot lay down too strongly the position that the English Estimates ought not to be relieved at the expense of the Indian revenues, but that the Secretary of State for India in Council has the constitutional right of refusing to pay for objects in which he considers that India has no interest. At the same time India, as a component part of the empire, must be prepared to share in the cost of a system, the expense of which may be enhanced for Imperial purposes.

“3. Your Committee have found that there has been, and is, considerable difference of opinion between the two great departments which conduct the military and Indian affairs of the Empire, both generally as to the proportion of the charges which ought to be borne by India, and in particular with respect to the items which should be taken into account.

“4. It has been attempted to settle these differences by means of a Committee composed of permanent officers of these two departments; but although the labours of this Committee have resulted in presenting the points of difference in a clear light, yet no agreement has been finally arrived at. Your Committee have been informed that, with a view to settle these differences, an independent authority is to be added to the Departmental Committee, for the purpose of bringing the questions thus stated to some satisfactory solution. Your Committee have been informed, in the course of their inquiry, that steps have been taken to supply this obvious want, and that the Government have secured the co-operation of Mr. Bouverie, a former Member of your House, as President of this Committee. Your Committee hope that the deliberations of this Committee will assist the heads of the English Departments and the Secretary of State for India to come to conclusions upon the charges in dispute satisfactory both to England and to India.

“5. Your Committee suggest that in the interval before next Session the Departmental Committee should, under the supervision of the President, continue the inquiries into all the details of charges which are now incurred by the War Office on behalf of Indian interests, and for which charges Indian interests are considered liable. Your Committee would indicate some of the heads which appear to need special investigation, such as the strength of depôts, and the ranks composing these depôts, and whether recruits are sent to India with much less training than the agreed-on period. Your Committee would also urge a further investigation into all the items of charge making up the total cost of recruits especially with regard to the large addition of one-third to the costs for deaths, desertions, &c. Your Committee would also advise an inquiry into the mode of adjusting claims of the War Office against Indian revenues arising subsequently to the 31st March 1872, there being no arrangement as yet fixed on as to the final adjustment of charges for effective services. Your Committee would also advise an inquiry into the arrangements for adjusting the non-effective charges, and whether the retiring pay, pensions, and other charges of this nature should be adjusted by the contribution of a lump sum, or whether the actual charges for pensions based on the actual service rendered to the Imperial and Indian Governments should be followed for settling these claims.

“6. It would be impossible for your Committee to pronounce an opinion of any value upon these details, especially at a time when so much of our military policy is new and scarcely tried, and must for some years to come be more or less tentative. They would, however, suggest that the payments from India should be as much as possible in the form of fixed rates for particular charges, for the obvious purpose of avoiding frequent re-opening of accounts, the delays in settling claims which have led to the serious evil of the accounts having been presented to Parliament without certificate from the auditor that the payments have been allowed, as well as the inconvenience which might arise from any sudden change of policy in either administration. They think that such sums should be,

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Appendix, No. 3. in the first instance, arrived at by careful computation; but that when once fixed they should continue without alteration for as many years as may be deemed advisable."

The Chancellor of the Exchequer would be prepared to accept the definition of Imperial and Indian charges contained in the second paragraph of the passage cited, provided there were some satisfactory method of deciding between the Imperial Government and the Indian Government in cases where the former asserts, but the latter denies, the presence of an Indian interest. He agrees further with the suggestion, that the payments from India should be, as much as possible, in the form of fixed rates for particular charges, for the obvious purpose of avoiding frequent re-opening of accounts, but he thinks that the experience of past years points to an extension of this principle further, probably, than the Committee intended, and that the only solution of the difficulty under consideration will be found in a return to the charge of a capitation rate per man fixed after careful consideration.

The Chancellor proceeds to lay before the Board the following documents showing the steps which have been taken in order to arrive at an understanding with the Secretary of State for War and the Secretary of State for India in Council, and the results which have been obtained:—

"1. Memorandum by Colonel Stanley, dated Treasury, December 1877, reviewing the history of these charges for the last 50 years, and proposing a course of proceeding for the settlement of the past and of the future claims.

"2. Memorandum drawn up in the India Office, dated the 10th December 1877, stating the India Office view as to the home charges for effectives, and also for non-effectives.

"3. Letter from Mr. Welby to the Chancellor of the Exchequer, dated 17th December 1877, commenting on Memorandums 1 and 2.

"4. Copy of the Auditor General's Report on the appropriation of the sums voted by Parliament in repayment of the War Office charges to 31st March 1877, dated 31st January 1878, and showing a balance due by India of 412,246*l*.

"5. Letter from Sir H. Ibbetson, the Financial Secretary to the Treasury, to the Secretary of State for India, dated 14th June 1878, suggesting a settlement of the accounts to 31st March 1879 (past and current), on the principle of accepting as final payments the sums already paid, or agreed to be paid, by the Indian Government, and a capitation rate from that date for the future, as a fair concession, and proposing to defer the question of the non-effective charges for the present.

"6. Letter from Lord Cranbrook, dated 15th June, stating that he is consulting his Council on this matter.

"7. Minute of Lord Cranbrook to his Council, dated 15th June, laying before them the preceding Papers 1 and 5.

"8. Minute of the Secretary of State for India in Council, dated 18th June 1878, based on a recommendation of the Finance Committee, agreeing to the proposals of the Secretary to the Treasury, but basing the capitation rate of the future on actual numbers in India.

"9. Letter from Lord Cranbrook to the Secretary to the Treasury, dated 18th June, enclosing the Minute of the Indian Council.

"10. Memorandum of discussion in the Chancellor's room on Friday, 21st June.

"11. Minute from War Office as to mode of carrying into effect the decision of the Chancellor as to the past accounts.

"12. Memorandum by Mr. Welby to the Chancellor of the Exchequer, commenting on the War Office Minute.

"13. Memorandum of discussion at the Treasury on the 29th June.

"14. Minute from the War Office as to the mode of carrying out the Chancellor's decision regarding the future claims.

"15. Memorandum by Mr. Knox upon the War Office Minute, No. 14."

Sir Stafford Northcote states that the first step towards a settlement was taken in August last, when the Secretary of State for India proposed to the Cabinet that, in cases where disputes may arise between India and some other department as to the charges to be made and recovered, a Committee of five members of the Privy Council should be appointed to decide the matter, their decision to be regarded as final. This Committee was to be constituted as follows:—

One member to be nominated on the recommendation of the Chancellor of the Exchequer;

One on that of the Secretary of State for India in Council;

Three, of whom at least one should be a member of the Judicial Committee, on the recommendation of the Lord Chancellor.

This proposal was circulated to the various offices, and was assented to in principle by all of them; but the Colonial Office asked that, in cases where they are concerned, the Secretary of State for the Colonies should nominate one member.

The Chancellor was led, on further consideration, to doubt whether such a tribunal would be effective; he suggested accordingly that the subject should be further considered, and he requested Colonel Stanley, then Financial Secretary of the Treasury, to take up the subject on the part of the Treasury. The result will be found in the Memorandum of December 1877, now laid before the Board. About the same time the Secretary of State for India in Council caused a Memorandum to be prepared explaining the views of the India Office. This paper is also among those presented to the Board.

Their Lordships will observe that both of these memoranda point to the same solution of the difficulty as regards the past, viz., that past accounts should be adjusted on the basis of actual payments. In other words, that the sum paid in past years into the

Imperial

Imperial Exchequer should be taken in full discharge of the claims of the Imperial upon the Indian Government in respect of the effective charges paid in England on account of Her Majesty's Troops serving in India. Appendix, No. 3.

The Chancellor of the Exchequer adds, that a suggestion to adopt this basis of settlement was recently made on his behalf, by Sir H. Ibbetson, to the Secretary of State for India in Council, and that the Secretary of State laid the suggestion before his Finance Committee, which passed the following Minute:—

“On the understanding that the proposition of Sir H. S. Ibbetson is that the advances made on account of the effective services of Her Majesty's regiments on the East India Establishment, in each year, from 1870-71 to 1877-78, and the estimated sum of 530,000*l.* for the year 1878-79 will be accepted by the Treasury in full discharge of all claims of the War Office on that account up to the 31st March 1879, the Finance Committee recommend that the proposition be adopted.”

The proposal was adopted by the Council of the Secretary of State.

The Chancellor states that he has since been in communication with the Secretary of State for War, who agrees that the proposal to adjust past and current accounts on the principle embodied in the above-quoted paragraph of the Minute of the Finance Committee of the Secretary of State for India, subject to a limitation hereafter mentioned, should be adopted.

The Chancellor having, therefore, assured himself of the concurrence of all parties concerned in a settlement of the past and current accounts, strongly recommends to the Board that they should accept the sums paid, or agreed to be paid, on account of the effective services of Her Majesty's regiments on the East India Establishment, from 1870-71 to 1878-79, both years inclusive, in full discharge of all claims of the Secretary of State for War on that account, up to the 31st March 1879, subject to the following modifications, viz., that the cost of stores, arms, accoutrements, clothing, and the charges for officers and non-commissioned officers of the Royal Engineers should be still settled in actual bills.

Before recommending the arrangement to the Board, the Chancellor has thought it his duty to ascertain, so far as materials already collected permit, the financial results which it would involve.

He finds, on reference to the Report of the Comptroller and Auditor General on account of the Vote for charges defrayed by the War Office for India in 1876-77, that the balance claimed by the War Office as still due to the Exchequer, for the years 1870-71 to 1876-77, both inclusive, amounts to 412,246*l.* 11*s.* 8*d.*, from which should be deducted the claim of 21,235*l.* on account of Royal Engineers, settled by direct claim of the War Office on the India Office, leaving a net balance of 391,011*l.*, claimed by the War Office.

On the other hand, the India Office dispute the correctness of a large part of the said balance. The amount, however, of their objection has not been ascertained. The Chancellor believes that the War Office would not be indisposed to concede a claim which the India Office put forward in respect of the charge for soldiers of above a certain period of service, and that this concession would amount, according to the computation of the Accountant General of the War Office, to about 150,000*l.* If this amount be deducted from the above-named sum of 391,000*l.*, claimed by the War Office, it leaves a net balance due to the War Office of 241,000*l.* The India Office, however, dispute other items amounting to a considerable sum, and Sir T. Seccombe expresses it as his opinion, given merely as an estimate, that the settlement proposed involves the foregoing by the Imperial Exchequer of a claim which India might admit, varying from 50,000*l.* to 130,000*l.* The net War Office claim has been stated at 241,000*l.*, the mean amount which Sir T. Seccombe is able to concede is 90,000*l.*, and the actual amount which the Imperial Exchequer will forego for the period to 31st March 1877, lies between these two sums. After consultation with the War Office and the India Office the Chancellor of the Exchequer came to the conclusion that the Estimates for 1877-78 and 1878-79 are probably fairly accurate, and that they would leave no large amount of balance in dispute, and he inclines to think that the settlement which he recommends, and which the War Office and India Office concur in, will involve a surrender by the Imperial Government of a sum to which it could establish its claim, varying from 100,000*l.* to 150,000*l.*

Looking at the condition of India at the present moment, the Chancellor is prepared to defend a settlement of account on this basis, although it involves so large a concession to India. It will, at all events, not be alleged on the present occasion that the Imperial Government has been too exacting; and as a compromise must involve a surrender on one side or the other, Sir Stafford Northcote thinks that Parliament would rather, in present circumstances, that the surrender should be made by the Imperial Government to India than the reverse.

Passing now to the future, the Chancellor of the Exchequer remarks that the Finance Committee of the India Council recommend that the suggested compromise of an annual rate of 6*l.* 10*s.* per man, of all arms in India, the numbers to be determined by the average of 12 monthly muster rolls, including all ranks, be agreed to, as a settlement of all effective charges by the War Office on account of India for future years, and that the arrangement should continue for a term of 10 years, commencing from 1st April 1879.

The Chancellor of the Exchequer is somewhat averse to adopting a fixed rate per man without some further inquiry. He would accordingly propose that a Commission should be

Appendix, No. 3. be appointed jointly by the India Office, War Office, and Treasury, upon the basis contemplated by Colonel Stanley in his Memorandum of December 1877, to fix the capitation rate to be paid per man in future, and that the rate so fixed should be in force for a certain number of years, and then be subject to revision.

The Chancellor of the Exchequer cannot advise that a revision of non-effective arrangements be made at present.

My Lords concur.

Send copies to the War Office and India Office with reference to previous correspondence, and say that my Lords would be glad to learn that the proposals contained in the Minute meet with the approval of the Secretary of State for War and of the Secretary of State for India in Council. Send copy also to the Comptroller and Auditor General for his information.

Let a copy of the Minute also be communicated to the Committee on Public Accounts.

#### Appendix, No. 4.

##### PAPERS handed in by the Secretary to the Treasury.

Appendix, No. 4. The Under Secretary of State, India Office, to the Secretary to the Treasury.

Sir,

India Office, 9 July 1878.

I AM directed by the Secretary of State for India in Council to acknowledge the receipt of your letter of the 4th instant, No. 11,123—78, enclosing copy of a Minute of the Board of Treasury, dated the 2nd instant, proposing that the Imperial Government "should accept the sums paid or agreed to be paid" by this office, "on account of the effective services of Her Majesty's regiments on the East India Establishment from 1870—71 to 1878—79, both years inclusive, in full discharge of all claims of the Secretary of State for War, on that account, up to the 31st March 1879, subject to the following modifications, viz., that the cost of stores, arms, accoutrements, clothing, and the charges for officers and non-commissioned officers of the Royal Engineers should be still settled in actual bills," and expressing the hope of the Lords of the Treasury that the proposal therein contained may obtain the concurrence of the Secretary of State in Council.

In reply, I am directed to convey to you the concurrence of the Secretary of State for India in Council in the proposal above referred to.

With reference to the further proposal, "that a Commission should be appointed jointly by the India Office, War Office, and Treasury, upon the basis contemplated by Colonel Stanley in his Memorandum of December 1877, to fix the capitation rate to be paid per man in future, and that the rate so fixed should be in force for a certain number of years, and then be subject to revision," I am also directed to state that Lord Cranbrook concurs therein, and will be prepared to nominate members to represent this office, when called on to do so.

The Secretary, Treasury.

I have, &c.  
(signed) *Louis Mallet.*

##### The Financial Secretary, War Office, to the Secretary to the Treasury.

Financial Secretary's Department, War Office,  
8 July 1878.

Sir,

Effective charges paid in England on account of Her Majesty's troops serving in India.

I AM directed by Secretary Colonel Stanley to acknowledge the receipt of Mr. Law's letter, dated 4th instant, No. 11,123, enclosing copy of the Treasury Minute, dated 2nd instant, and to acquaint you, in reply, that the Secretary of State for War, in view of the reasons stated in the Treasury Minute, is not desirous of offering any objection to the course approved by their Lordships for adjusting the accounts for the past and current period up to 31st March 1879, and fully concurs in the proposal for a Commission of Inquiry being held with a view to settling the terms on which the home effective charges against India should be based for the future.

The Secretary to the Treasury.

I have, &c.  
(signed) *R. Loyd Lindsay.*

I N D E X  
TO THE  
R E P O R T S  
FROM THE  
C O M M I T T E E  
OF  
P U B L I C A C C O U N T S.

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*Ordered, by The House of Commons, to be Printed,  
10 July 1878.*

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# I N D E X.

[*N.B.*—In this Index the Figures following the Names of the Witnesses, and those in the Analysis of Evidence of each Witness, refer to the Questions in the Evidence; the Figures following *App.* (*First Rep.*), and *App.* (*Second Rep.*), refer to the Pages in the Appendices; and the Numerals following *First Rep.* and *Second Rep.* to the Pages in the First and Second Reports, respectively.]

## A.

**ADMIRALTY.** See *Navy Accounts*.

*Anglo-Maltese Dock Company.* Explanation relative to the loan to this Company, the balance outstanding, and the arrears of interest, *Welby* 657–662. 937; *App.* (*Second Rep.*) 41.

*Appropriation Accounts.* View of the Treasury, in October 1877, as to the expediency of the Appropriation Accounts being delivered within seven days, at latest, of the meeting of Parliament, as prescribed by statute, *App.* (*First Rep.*) 51.

## ARMY ACCOUNTS:

1. *Extended Audit of Army Accounts; Accommodation being provided at Winchester House.*
2. *Explanations on the part of the War Office, Audit Office, and Treasury relative to sundry Items in the Accounts for 1876–77.*
3. *Charges defrayed by the War Office on account of India; Settlement arrived at.*
4. *Surplus on the Vote for 1876–77.*

1. *Extended Audit of Army Accounts; Accommodation being provided at Winchester House:*

Communication from the Treasury to the War Office in 1877, consequent upon the Report of the Public Accounts Committee, with reference to the extended audit of Army Accounts, *App.* (*First Rep.*) 53, 54.

Expected completion in May (1878) of the arrangements for the accommodation of the officers of the Audit Department at Winchester House, *Milton* 736, 737—Delay in providing accommodation at Winchester House for the officers of the Comptroller and Auditor General; department responsible, *Welby* 738–741.

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I N D E X

TO THE

R E P O R T S

FROM THE

C O M M I T T E E

OF

P U B L I C A C C O U N T S.

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*Ordered, by The House of Commons, to be Printed,  
10 July 1878.*

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277.

*Under 3 oz.*

R E P O R T

FROM THE

SELECT COMMITTEE

ON

ARMY (ROYAL ARTILLERY AND ENGINEER  
OFFICERS' ARREARS OF PAY);

TOGETHER WITH THE

PROCEEDINGS OF THE COMMITTEE,

M I N U T E S   O F   E V I D E N C E,

A N D   A P P E N D I X.

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*Ordered, by The House of Commons, to be Printed,*  
*29 May 1878.*

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*Ordered*,—[*Thursday, 7th February 1878*]:—THAT the Select Committee of last Session on Royal Artillery and Royal Engineers' Officers' Arrears of Pay be re-appointed.

THAT the Committee do consist of Seventeen Members:

Lord Eslington.	Mr. Carpenter Garnier.
Mr. Grant Duff.	Mr. Denzil Onslow.
Lord George Hamilton.	Major O'Beirne.
Mr. Campbell-Bannerman.	Mr. Mills.
Sir Walter Barttelot.	Sir George Balfour.
Mr. Fawcett.	Sir Henry Wolff.
Sir John Hay.	Mr. Courtney.
Mr. Muntz.	Colonel Jervis.
Mr. William Holms.	

THAT the Committee have power to send for Persons, Papers, and Records.

THAT Five be the Quorum of the Committee.

*Ordered*,—[*Monday, 1st April 1878*]:—THAT Colonel Loyd Lindsay be added to the Committee.

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## R E P O R T.

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THE SELECT COMMITTEE to whom was referred the PAPERS respecting the ARREARS of PAY due by the GOVERNMENT of INDIA to OFFICERS of the ROYAL ARTILLERY and ROYAL ENGINEERS;—HAVE considered the Matters to them referred, and have agreed to the following REPORT:—

IN the year 1872 it was determined by the Secretary of State for War, with the concurrence of the Field Marshal Commanding in Chief, to give the rank of field officer to first captains of artillery and engineers. The principal reason assigned for this step by Lord Cardwell, in the House of Commons, was the increased importance of the command of a battery, which appeared to be at least equal in responsibility to the command of the wing of an infantry regiment.

This resolution having been formed, and announced to Parliament, a Warrant was issued in July 1872, carrying it into effect.

The Warrant, however, while conferring the higher rank upon the officers in question, did not assign to them a rate of pay precisely identical with that of majors of line regiments. Had it done so, the rates of pay would have been 19*s.* 6*d.* a day for majors of horse artillery, and 16*s.* for majors of field and garrison artillery; whereas the rates actually sanctioned by the Warrant were 18*s.* and 14*s.* 6*d.* respectively, with 1*s.* 6*d.* command money. The reason for this division of the pay was stated in a letter from the War Office to the Treasury, 23rd May 1872, to be “in order to avoid certain complications when “these officers may serve in India.”

There had in fact been a prolonged course of communications (mostly of a personal and informal character) between the India Office and the War Office during the early months of 1872 upon this subject, the communications chiefly relating to the expenditure which the proposed change might impose upon the revenues of India, Lord Cardwell being of opinion that the Indian Government might, to a considerable extent, indemnify themselves, and at the same time increase the efficiency of the service, by abolishing the system of contract allowances, which had long prevailed in India.

Under this system the officer in command of a battery received a certain fixed allowance, out of which he supplied all the material requisite to maintain his battery in efficiency. This allowance is admitted on all hands to have been beneficial, in a pecuniary sense, to the officer, who sometimes made a large profit, although in active service, or on the march, this profit might disappear.

The policy of putting an end to, or modifying, this system, was of course a matter for the decision of the India Office alone, and was recognised by the Secretary of State for War to be so; but the change in the rate of pay, above referred to, was made in order to give to the Secretary of State for India in Council the option of making such arrangements as might seem to him to best meet the necessities of the case.

The Secretary of State for India, however, after the Warrant was issued to the Army, did not think it necessary or expedient, in announcing to the

Army in India the alteration in rank, to assign any higher pay to the new majors than the Indian pay and allowances they had received as first captains; the reason being thus given in a letter to the War Office, 11th July 1872: "His Grace desires me to say that as the officers now holding the position of first captains in those two corps in India are liberally remunerated for their services in that country, he does not consider that any change in their present rate of Indian pay and allowances is called for by the proposed change of rank and designation."

The pay and allowances, alluded to above, form the remuneration received from the Indian Government by British officers who are upon the Indian Establishment and serving in India. These military allowances are under the control and regulation of the Secretary of State for India in Council, and are in excess of the amount to which British officers of a similar rank, but stationed in the United Kingdom, are entitled by Royal Warrant and Regulation.

Accordingly, when the Royal Warrant was published in India on the 15th of August 1872, it was accompanied by an intimation to the following effect:—

"The Indian pay and allowances of regimental majors of Royal Artillery and Engineers will be the exact amount now drawn by first captains of those corps. The Governor General in Council further notifies that, with a view to improving the position of officers of Royal Artillery commanding garrison batteries, the allowance for that command will be increased from 30 rupees to 100 rupees per mensem. The increased rate of command allowances sanctioned for garrison batteries of Royal Artillery will come into effect from the 1st August 1872."

This arrangement, however, failed to give satisfaction to the officers affected, who at once began to present appeals to the Indian Government, claiming "the Indian pay and allowances received by majors of line regiments serving in India."

The Government of India, in forwarding certain of these memorials to the Secretary of State, under date 15th May 1873, express their opinion on the subject thus:

"On the whole we have come to the conclusion that it would be expedient to grant the higher rates of pay, and to withdraw the contract allowances for repairs of carriages and harness of batteries of Royal Artillery.

"We think this will be the most satisfactory course. It is true that in most cases the profit from this contract exceeds the difference of pay between that of a captain and a major, but any prolonged active service would greatly reduce this rate of profit, or perhaps cause it entirely to disappear. Further, majors of engineers receive no contract allowance whatever, and the grant of 100 rupees a month, sanctioned by your Grace, to majors in command of garrison batteries, still leaves them with much less pay than majors of infantry.

\* \* \* \* \*

"We would therefore propose that, from the 1st April next, all majors of Royal Artillery and Royal Engineers in India should receive the pay recently allowed to lieutenant colonels of these corps on major's pay, and that the contract allowances for repairs of carriages and harness should cease; command money and allowance for shoeing, &c., and for repairs of arms, continuing as at present.

\* \* \* \* \*

"From the same date we would propose to discontinue the higher command allowance of 250 rupees and 100 rupees given to officers in command of heavy field and garrison batteries respectively, restricting them to the lower rate of command money given to officers commanding batteries of horse and field artillery. The former was originally given in lieu of a contract allowance, and the latter was specially sanctioned by your Grace in consequence of the full major's pay not having been given to majors of Royal Artillery.

"We desire to submit the foregoing proposals for the sanction of your Grace, and believe that while all reasonable cause for discontent will be removed

"removed by the proposed concession to officers of Royal Artillery and Engineers, various anomalies, which may at times lead to inconvenience, will be removed by doing away with the system of contracts." \* \* \*

In reply to this Despatch, the Duke of Argyll asked the Government of India to furnish him with a statement of the estimated financial effect of their proposals, and in complying with this request on the 17th April 1874, Lord Northbrook's Government repeated the expression of their opinion that "the expenditure is necessary, for as officers have been given a certain rank, they not unnaturally look to receive the pay of that rank; and the reply, that the higher pay is not given because they are assumed to make a certain profit out of battery contracts, will never be satisfactory to those concerned, while we do not consider that the contract system itself will for long be generally acceptable to officers of the Royal Artillery."

Finally, Lord Salisbury, on 9th July 1874, accepted the proposals of the Indian Government, using these words:—

"You have arrived at the conclusion that the net increased cost due to these measures will probably be over 30,000 *l.* a year, but must be under 40,000 *l.*

"Your Government, however, consider the expenditure to be necessary on the grounds that, as officers have been given a certain rank, they, not unnaturally, look to receive the pay of that rank; and that the reply, that the higher pay is not given because they are assumed to make a certain profit out of battery contracts, will never be satisfactory to those concerned.

"I approve of these proposals, and authorise you to carry them into effect from the date named by you, viz., the 1st April 1875, or from any other date which you may think it expedient to fix."

This was accordingly carried out, and since the 1st April 1875, majors of artillery and engineers in India have received the increased pay thus authorised, while contract allowances have ceased.

The contention of the officers, however, remains, that they ought to have received this increase of pay irrespective of any emoluments that may have been received under the contract system, from the day on which they were promoted in substantive rank; and thus arise those alleged arrears alluded to in the Resolution of the House under which this Committee was appointed.

These are the main facts in this case, as disclosed in the Papers referred to this Committee, and brought out in evidence before them.

Your Committee are without any instruction from the House regarding the precise matters as to which they should report their opinion, the resolution which caused their appointment being in these general terms:—

"That the Papers respecting the arrears of pay due by the Government of India to officers of the Royal Artillery and Royal Engineers be referred to a Select Committee."

But your Committee presume that the main question referred for their opinion is, whether the claims urged are just, and whether these officers ought or ought not to receive the arrears of pay which they allege to be due for the period between the 5th July 1872 and the 1st April 1875. Your Committee do not conceive that they are called upon to pronounce any opinion upon matters affecting the organization of the army, such as the policy of giving the rank in question, or the policy of maintaining or abolishing contract allowances; nor upon the relations between the India Office and the War Office, still less upon the constitutional position and statutory powers of the Council of India; all of which points have been more or less brought into controversy in connection with this subject.

Confining themselves, therefore, to the simple point whether or not the majors of engineers and artillery in question have an equitable claim upon the Indian Government, your Committee would express their opinion:—

- (1.) That those officers ought, under the special circumstances of the case, to receive, in one form or another, the pay of their substantive rank.
- (2.) That they are not entitled, in addition, to claim the full emoluments of contract allowances.



(3.) And therefore that if any officer can show to the satisfaction of the Government that in the interval between the 5th of July 1872 and 1st April 1875, the profit he may have enjoyed from his contract allowances fell short of the difference between his pay of a first captain and his present pay as a major, he shall have a fair claim to the amount of such deficiency.

As, however, owing to the lapse of time, it may be difficult or impossible to ascertain the facts regarding the profitable nature of contract allowances in individual cases, your Committee would suggest that a basis of settlement may be found in the opinion expressed by the Governor General in Council, "that 200 rupees per mensem was the average profit obtained by officers for their contract allowances, and the Committee think that that amount should be counted as having been paid by the Indian Government, as also the sum of 100 rupees per month granted to officers commanding garrison batteries."

1858, c. 106,  
s. xli.

Your Committee are well aware of the peculiar function which the Council of India fills in regard to the finances of India. By the statute which creates it, it is enacted that "the expenditure of the revenues of India, both in India and elsewhere, shall be subject to the control of the Secretary of State in Council, and no grant or appropriation of any part of such revenues, or of any other property coming into the possession of the Secretary of State in Council by virtue of this Act, shall be made without the concurrence of a majority of votes at a meeting of the Council."

Your Committee fully recognise the importance of supporting the Council in the somewhat ungrateful and difficult task (so well described by Sir F. Halliday in his evidence) which thus devolves upon it, in the interest of the Indian people, of frequently resisting claims in cases where its members cannot but feel a personal sympathy with the claimants.

Despatch of  
9 July 1874.

But in this instance it appears to your Committee that the expressions above quoted from the Despatches of the Government of India (15th May 1873 and 17th April 1874), which expressions have received the acquiescence of, and have been acted upon by, the Secretary of State for India in Council, practically concede the whole case; for if the disproportion between the rank and pay of officers is a just ground of complaint, it was so before 1st April 1875, quite as much as after that date.

Your Committee, therefore, feel that they have virtually, if not literally, the sanction of the Secretary of State in Council to some recognition of the claims of these officers, and they submit the above proposal to the House, in the hope that in it may be found an equitable solution of the question.

29 May 1878.

## PROCEEDINGS OF THE COMMITTEE.

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*Wednesday, 20th March 1878.*

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### MEMBERS PRESENT :

Colonel Jervis.  
Sir Walter Barttelot.  
Mr. Campbell-Bannerman.  
Sir John Dalrymple Hay.  
Sir George Balfour.  
Mr. Denzil Onslow.

Mr. Carpenter Garnier.  
Mr. Muntz.  
Major O'Beirne.  
Mr. Fawcett.  
Lord George Hamilton.

Colonel JERVIS was called to the Chair.

The Committee deliberated.

[Adjourned till Wednesday, 3rd April, at Three o'clock.]

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*Wednesday, 3rd April 1878.*

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### MEMBERS PRESENT :

Colonel JERVIS in the Chair.

Mr. Denzil Onslow.  
Major O'Beirne.  
Mr. Carpenter Garnier.  
Sir George Balfour.  
Sir John Dalrymple Hay.  
Colonel Loyd Lindsay.  
Sir Walter Barttelot.

Lord George Hamilton.  
Mr. Campbell-Bannerman.  
Mr. William Holms.  
Sir Henry Drummond Wolff.  
Mr. Fawcett.  
Mr. Muntz.

Mr. *Ralph Thompson* was examined.

[Adjourned till Friday next, at Two o'clock.]

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*Friday, 5th April 1878.*

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### MEMBERS PRESENT :

Colonel JERVIS in the Chair.

Mr. Carpenter Garnier.  
Sir George Balfour.  
Sir Henry Drummond Wolff.  
Mr. A. Mills.  
Colonel Loyd Lindsay.  
Sir Walter Barttelot.  
Mr. Campbell-Bannerman.

Mr. Muntz.  
Mr. William Holms.  
Mr. Denzil Onslow.  
Mr. Courtney.  
Major O'Beirne.  
Mr. Fawcett.

His Royal Highness the Duke of *Cambridge* (attending by permission of the House of Lords), was examined.

[Adjourned till Friday, the 17th of May, at One o'clock.]

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*Friday, 17th May 1878.*

## MEMBERS PRESENT :

Colonel JERVIS in the Chair.

Mr. Carpenter Garnier.  
Major O'Beirne.  
Mr. Denzil Onslow.  
Sir Henry Drummond Wolff.  
Sir John Dalrymple Hay.  
Colonel Loyd Lindsay.  
Sir Walter Barttelot.

Mr. Campbell Bannerman.  
Lord George Hamilton.  
Mr. William Holms.  
Mr. Fawcett.  
Mr. Muntz.  
Mr. A. Milla.  
Mr. Courtney.

DRAFT REPORT proposed by the *Chairman* brought up and read the first time, as follows :—

Q. 12. " 1. From 1867 to 1872, the position of the Royal Artillery and Royal Engineers had  
Q. 123. occupied the attention of the War Office, and of Parliament, and in 1871, H.R.H. the Field Marshal Commanding in Chief issued instructions which imposed grave responsibility on officers commanding batteries on service. Lord Cardwell considered that, in consequence, these officers should have field officers' rank, and he intimated the fact to the Secretary of State for India, when the following correspondence ensued :—

Q. 19. " " Sir, " " India Office, 5 February 1872.  
" I am directed by the Secretary of State for India in Council to request that you will bring to the notice of the Secretary of State for War that of the various changes in the organisation of the British Army which either have been actually made from time to time, or which may now be in contemplation, many will inevitably affect for good or evil the financial interests of British India, and I am to express a hope that all proposed measures of this nature may be not only considered by Mr. Cardwell in their possible effect upon the military expenditure of that country, but that they may be referred for the expression of an opinion on the part of the Secretary of State for India in Council before being finally adopted.

" 2. The Duke of Argyll has been led to urge this point upon the attention of Mr. Cardwell in consequence of information having reached him that it is in contemplation to introduce a change in the organisation of the Royal Artillery, which, whatever may be its financial effects in this country, would lay upon the finances of India a large additional burden, of the necessity of which his Grace is not at present in a position to form an opinion.

" 3. His Grace has reason to believe that it is proposed not only to restore to the Corps of Artillery the grade of major, which was deliberately abolished in 1827 as being unsuited to that arm of the service, but to substitute that grade regimentally for that of First Captain.

" 4. The immediate effect of this measure on India would be to increase the pay of 120 officers by about 420 l. per annum, thus making an immediate addition of 50,000 l. a year to the Indian Military Expenditure, without calculating the effect that would be produced if, as it is presumed would be the case, a similar course were followed as regards the Engineers.

" 5. The Duke of Argyll cannot doubt but that Mr. Cardwell will recognise the importance of regulating military arrangements in this country, as far as sound principles of military organisation will admit, by a reference to the interests of the Indian, no less than to those of the more wealthy British taxpayers, and that neither the particular measure to which I have referred, nor any other measure having a similar bearing on the interests of the former, will be finally sanctioned until the views of the Secretary of State in Council have been recorded upon the subject.

" " I have, &c.  
(signed) " " T. T. Pears. "

" " The Under Secretary of State for War. "

" 2. The following reply was sent :—

Q. 19. " " Sir, " " War Office, 8 February 1872.  
" I am directed by the Secretary of State for War to acknowledge the receipt of Major General Sir T. Pears's letter of the 5th instant, and in reply I am to request that you will state to the Secretary of State for India in Council that Mr. Cardwell admits that Indian financial considerations ought not to be overlooked in dealing with questions of military expenditure.

" He has always acted on this principle, and more especially in the reductions, both as respects Artillery and Cavalry, which were made when the large financial deficit of India was discovered in 1869-70.

" " But

“ But he must, at the same time, consider that what is just and expedient or even necessary, for the British Army cannot be set aside because the peculiar arrangements of India render the change more expensive in that country than in this.

“ The financial arrangements of India and the military allowances are in the control of the Secretary of State for India in Council, and if the allowances are too large, the Secretary of State in Council can reduce them only, considering the opinion of the Secretary of State for War, so far as the fair position of officers of the British Army may require.

“ In the particular case of Majors of Royal Artillery, which Mr. Cardwell gave the Duke of Argyll to understand was under consideration, Mr. Cardwell believes that the contract of allowances of captains of mounted batteries are so beneficial in a pecuniary sense to the holders, being much in excess of what is required for the efficient maintenance of the batteries, as practically to make the emoluments of the Field Artillery Captain greater than those of a Major of the Line, and he sees no reason, therefore, why, if the rank of Major shall be established in the Royal Artillery, the expense to India need be increased by the sum of 50,000 £.

“ The Under Secretary of State for India.”

“ I have, &c.  
(signed) “ J. C. Vivian.”

“ 3. On the 22nd February 1872, the Secretary of State for War stated to the House of Commons on moving the Army Estimates:—

“ We think that the command of a battery in the field, looking to the immense importance of artillery in the warfare of the present day, and looking at the Order recently issued by the Commander in Chief, that artillery is to act more independently for the future, we think that the command of a battery may very properly be assigned to a field officer. . . . We now propose to establish the rank of major in the Artillery, with the pay and position similar to that of major in the line.

“ In the case of the Royal Engineers the matter is much simpler. No question arises there as to whether a battery is a field officer's command or a captain's command. The nature of the service of the Royal Engineers admits of proportioning your ranks, so that you may give what promotion you desire. We propose, therefore, to give them a promotion equivalent to that which I have spoken of with regard to the Royal Artillery.”

Q. 7.

“ On the 15th June 1872, the Secretary of State for War transmitted to the Secretary of State for India, ‘ Copies of Warrants which he proposes to submit for the approval of Her Majesty, having for their object the improvement of the condition of the officers of the Royal Artillery and the Royal Engineers.’ Therein it was stated: ‘ It being expedient that a battery be commanded by an officer having the rank of major, all officers now holding the rank of captain in our Royal Artillery shall be promoted to the regimental rank of major from the date of this Warrant.’ App. No. 1, p. 124.

“ All officers now holding the rank of captain in our Royal Engineers shall be promoted to the rank of major from the date of this Warrant.”

“ 5. The Warrants further regulated the pay of these officers, so as to make it not similar, but equivalent to that of majors of the line.

“ 6. On the 18th June 1872, a motion, adverse to the proposition of the Government, was made in the House of Lords: ‘ That an humble address be presented to Her Majesty, praying that a commission may be issued to inquire into the alleged injustice towards the captains of the late purchase corps, occasioned by their proposed supercession by the first captains of the scientific corps; and further to inquire whether the intended advancement of the first captains of the Royal Artillery and Engineers to the rank of field officers would have the effect of removing the slowness of promotion in those corps, and as to the best means of remedying the same; and that in the meantime, and until the report of the commission, the publication of the Royal Warrant on this subject be delayed.’ It was carried by a majority of three.

Q. 14.

“ 7. On the 27th of June, the Royal Answer to the Address of their Lordships was brought up:—

“ I have received your Address, praying that a commission may be issued to inquire into the alleged injustice towards the captains of the late purchase corps, occasioned by their supposed supercession by the first captains of the scientific corps; and further to inquire whether the intended advancement of the first captains of the Royal Artillery and Engineers to the rank of field officers would have the effect of removing the slowness of promotion in those corps, and as to the best means of remedying the same, and that in the meantime, until the report of the commission, the publication of the Royal Warrant be delayed.

Q. 14.

“ I have been advised that the establishment in the Royal Artillery and Royal Engineers of the rank of major, already existing in the other branches of the Service, having been decided upon after full consideration, and provision having been made for carrying the arrangement into effect, the revocation or delay of that arrangement would be inexpedient.”

“ 8. On 28th June the question was again raised in the House of Commons by Major General Sir Percy Herbert who especially drew attention to the additional expenditure

Q. 15.

to India which this measure would necessitate, and moved for a Select Committee, 'To inquire whether the intended promotion to the rank of regimental majors of first captains of Artillery and Engineers, at an annual cost to this country of over 20,000 £., and at a further addition to the Indian military expenditure, not yet stated to Parliament, is justified by any commensurate advantage to the public service.'

"9. It was opposed by the Secretary of State for War, who pointedly alluded to the long service of some of the late Indian Artillery, and it was withdrawn.

"10. The Warrants received Her Majesty's sanction on 5th July 1872.

Q. 33.

"11. The pay of a major of the line in the Infantry at home is 16*s.* a day, in the Cavalry 19*s.* 6*d.* The Warrant directed that in the garrison and field batteries the pay should be 14*s.* 6*d.*, with 1*s.* 6*d.* command money; for the Horse Artillery 18*s.*, with 1*s.* 6*d.* command money. In the Royal Engineers, 15*s.* The reason assigned for this division of the pay, was thus explained in a letter from the Under Secretary of State for War to the Treasury, 23rd May 1872:—'These majors are, in effect, to have 19*s.* 6*d.* a day is commanding Horse Artillery batteries; and the pay of Infantry majors, if commanding batteries of Foot Artillery; but in order to avoid certain complications, when these officers may serve in India, it is intended to give them pay at 18*s.* (being the pay of a captain and brigade major) and 14*s.* 6*d.* respectively, making up the difference to 19*s.* 6*d.* and 16*s.* by the addition of 1*s.* 6*d.* a day as command pay while actually in command of batteries.'

Q. 902.

"12. This command pay consequently differed from ordinary command pay. The latter is granted to cover the expenses of hospitality within a given command, and being held to be thus wholly expended, is issued free of income duty; the command pay of the battery major being *bonâ fide* pay, and became liable to income duty.

"13. On 11th July 1872, the following communication was made by the India Office to the War Office.

"'With regard to the propriety of restoring the regimental rank of major (which was abolished in the British Ordnance Corps in 1827, in the Indian Artillery and Engineers in 1858), with the view of improving the condition of the officers of the Royal Artillery and Royal Engineers, the Duke of Argyll does not feel himself called upon to offer an opinion. His Grace desires me to say, however, that as the officers now holding the position of first captains in those two corps in India are liberally remunerated for their services in that country, he does not consider that any change in their present rate of Indian pay and allowances is called for by the proposed change of rank and designation.'

\* Q. 124.

"14. No reply was made to that communication by the War Department 'because,' as Lord Cardwell stated, 'as it was written after the Warrant was already issued, it could merely have led to what I consider would have been a useless controversy.'" Between 1869 and 1872 there had been a great deal of similar correspondence between the India Office and the War Office with reference to matters of military detail which had given rise to considerable acrimony, between the two offices†, and this was not the only letter the India office left unanswered‡. But Lord Cardwell also observed, 'I always have understood that there are modes, perfectly well understood in the Army, by which an officer or a private, if he thinks he has in any way injured, may communicate it through the proper channels to the highest authorities.'

† Q. 1314–1316.  
Q. 1670.

‡ Committee on East India Finance, Q. 160.  
Ditto, App., p. 249.  
Q. 38.

App. No. 1, p. 123.

"15. On the 15th August 1872, the Royal Warrants were published in India by the Governor General in Council, with the following notice, in consequence of instructions received from the India Office.

"'The Indian pay and allowances of regimental majors of Royal Artillery and Engineers will be the exact amount now drawn by first captains of those corps.

"'The Governor General in Council further notifies that, with a view of improving the position of officers of Royal Artillery commanding garrison batteries, the allowance for that command will be increased from 30 rupees to 100 rupees per mensem.

"'The increased rate of command allowance sanctioned for garrison batteries of Royal Artillery will come into effect from the 1st August 1872.'

"16. The difference of Indian pay involved, is thus given by the Accountant General, Military Department in India.

Parliamentary Return, East India (Artillery Officers' Memorial), 11 June 1875.  
Report of S. W. Kellner, Accountant General, Military Department, p. 28.

	Horse Artillery Battery.	Field and Mountain Battery.	Garrison Battery and Ordnance Department.	Staff Employ.
	<i>Rs.</i> <i>a.</i> <i>p.</i>	<i>Rs.</i> <i>a.</i> <i>p.</i>	<i>Rs.</i> <i>a.</i> <i>p.</i>	<i>Rs.</i> <i>a.</i> <i>p.</i>
Pay as Major, per mensem - -	929 6 4	789 3 -	759 3 -	640 14 -
Present pay as Captain - - -	563 - 4	493 10 -	433 10 -	433 10 -
Difference - - - <i>Rs.</i>	366 6 -	295 9 -	325 9 -	207 4 -

"17. The

"17. The greater proportion of the majors of the Royal Engineers were employed in the Civil and Public Works Departments, and in receipt of consolidated salaries; but as regards those who were not, the difference of the pay between captain and major was,—

	Pay and Indian Allowances.		Pay Proper.
	On Staff Employ.	On Regimental Duty.	
	<i>Rs. a. p.</i>	<i>Rs. a. p.</i>	<i>Rs. a. p.</i>
As Major, per mensem	759 3 -	789 3 -	182 10 -
As Captain -	433 10 -	433 10 -	140 - -
Difference - - - <i>Rs.</i>	325 9 -	355 9 -	42 10 -

Parliamentary Return, East India (Artillery Officers' Memorials), 11 June 1875.  
Report of S. W. Kellner, Accountant General, Military Department, p. 29.

"18. The officers thus affected at once appealed for redress, urging that as British officers they were entitled while in India to Indian pay equivalent to that of majors of the line, as laid down by the regulations then in force in India.

"19. The rates of British Indian regimental pay date from 1796. They were based strictly on substantive rank, and, with but one exception, which will be subsequently referred to, had ever been adhered to. Royal Commission, Army, E. I. C., 1858.

"20. These claims were forwarded by the Commander in Chief, Lord Napier of Magdala, for the favourable consideration of the Government of India on 27th December 1872; and on 14th May 1873, he was informed 'that these representations will be at once forwarded for the consideration and orders of Her Majesty's Government.' East India, R. A. Memorials, 1875, p. 11.  
Ditto, page 21.

"21. The majors of the Ordnance Corps received no reply to their memorials until 19th January 1875, when it was notified in General Orders that they should receive Indian pay equivalent to that of Major in the Line from 1st April 1875, and 'that, with the approval of Her Majesty's Government, the following contract allowances hitherto drawn with headquarters of brigades, and all batteries of Royal Artillery serving in India (horse, field, garrison, heavy, and mountain, British and Native), will cease from the 1st April 1875, from which date the supply and repairs of all articles of equipment hitherto provided for by these allowances will be effected in accordance with the practice in force in Her Majesty's service in England and in the Colonies, viz., allowances for repair of guns and waggons, carts, harness, saddlery, leather, ammunition and store boxes, lascar pals, medicines and stable requisites, gun contingent allowance, shoeing and line gear, grampots, cavessons, petty stores.' Ditto.  
General Orders, Military Department, Fort William, 19 January 1875, pp. 35-36.

"22. They at once again urged that they were entitled to their pay from the time that they were promoted, a claim which was supported by the authorities at the War Office, and it was not until 13th June 1877 that the India Office definitely decided to refuse it. Q. 276.

"23. As regards the majors in command of horse, field, &c., mountain batteries, the reason originally assigned, although it was not communicated to the officers concerned, was that of 'contracts,' referred to in Lord Cardwell's letter of 8th February 1872, which, in his opinion, was an undesirable system to be maintained, and which he states he had been told, if taken in hand by the Government of India, would go far towards meeting the extra expense proposed to be incurred. But with respect to those in command of garrison batteries, of those employed in the Ordnance Department, or on the staff, or majors of Royal Engineers not in receipt of consolidated pay, the only cause alleged, was, that it would have rendered its refusal to the others more embarrassing to uphold. Q. 781.  
Q. 828-31.

"24. The Government of India, instead of supplying the necessary material for the maintenance of their batteries, as is usual with all European powers, had inherited a system which had been found beneficial by the East India Company when the artillery in India was exclusively a portion of its army, it having saved them the expense of forming and protecting arsenals, and of forwarding material over so great an extent of country, large tracts of which possessed no roads. This system consisted of the officer in command of a battery having to supply all the material requisite for its maintenance for a sum fixed by the Government of India. Q. 539.  
Q. 622.

" 25. The Artillery contracts were as follows, per mensem :—

HORSE ARTILLERY.			LIGHT FIELD BATTERY.		
		<i>Rs. a. p.</i>			<i>Rs. a. p.</i>
For guns, waggons, carts, &c. - - -		110 - -	For guns, waggons, carts, &c. - - -		110 - -
For harness, at 2 rupees - - -		196 - -	For harness, at 1-8 - - -		135 - -
For saddles, at 1 rupee - - -		70 - -	For saddles, at 1 rupee - - -		20 - -
For shoeing horses, at 2 rupees - -		356 - -	For shoeing horses, at 2 rupees - -		220 - -
Gram pots, cavassons, petty stores - -		27 12 -	Gram pots, cavassons, petty stores - -		25 12 -
Repair of arms - - -		30 - -	Repair of arms - - -		30 - -
	<i>Rs.</i>	789 12 -		<i>Rs.</i>	540 12 -

East India, R. A.  
Memorials, 1875,  
p. 30.

Q. 538, 568, 282,  
760-63.

" They dated for the most part from the beginning of the present century, and some from the last, and had not since varied, though the cost of all commodities had vastly increased, and the value of the rupee had equally decreased.

" 26. The officers concerned contend that—

" 1st. These contracts formed no part of the Indian pay of a first captain of artillery; they had to be drawn by the officer in actual command of the battery, whether first captain, second captain, or subaltern, in consequence of duties imposed upon them by the State for the advantage of the State. The profit was their indemnification, and could not be taken into account as regards their increase of pay.

" 2nd. No officer could, out of the contracts, have cleared the difference between the pay of a captain and that of a major.

" The first of these points has received the unanimous assent of the Governor General of India in Council.

Q. 282.

" 27. In a Despatch to the Secretary of State for India in Council, 1874, they state (para. 15)—

" ' We think, however, that the expenditure is necessary, for as officers have been given a certain rank, they not unnaturally look to receive the pay of that rank, and the reply that the higher pay is not given because they are assumed to make a certain profit out of battery contracts will never be satisfactory to those concerned; while we do not consider that the contract system itself will for long be generally acceptable to officer of Royal Artillery.'

" 28. With reference to the second of these points, the Government of India, in the same Despatch, observes—

" ' It is easy to estimate the extra cost of giving the increased pay, but a wide margin must be left in the estimate of saving to Government by taking over the contracts. The Government have no means of knowing what was the actual profit obtained by officers commanding batteries in India out of the contract allowance. That profit depended not only upon the carefulness or otherwise of individual officers, but also on the part of the country in which batteries were stationed, and the circumstance of their being moved about or not, or serving in active operations against an enemy, or with camps of exercise. At times it is possible that officers cleared very little, but on the whole it is apparently pretty certain that officers of batteries of Field or Horse Artillery cleared from 150 rupees to 200 rupees per mensem, or perhaps more.' And the Report of the Accountant General, Military Department, on which this statement is made, says, ' To determine this, it would be necessary to obtain accurate data of the proportions of contract allowances that have been actually expended in the past; but on this point, probably, the experience of no two officers would agree. The expenditure is, in fact, dependent upon individual predilections; a careful, thrifty officer, with a knowledge of the country and of prevailing prices, would expend a much less proportion of his contract allowances than another, who thought only of the efficient equipment of his battery at any cost. In certain items the contract allowance is found to be really insufficient, but there is a general consensus of opinion that on the whole the contract allowances do yield some profit, though the profit necessarily varies according to localities, and to the personal qualities and arrangements of the commanding officers.'

Q. 282.

" ' After due inquiry and consultation with experienced officers, I am of opinion that 25 per cent. (or a fourth of the total contract allowances) would be a fair measure of the probable saving by the abolition of the contract system.'

" 29. But the Government of India, doubtful of even this 25 per cent. profit, suggested in the same Despatch that several of these contracts should still be carried out by the officer commanding the battery, even where it necessary to give him an increased allowance on those heads to prevent his being an actual loser :—

" ' We

East India, Royal  
Artillery Memorial  
1875, p 11.

" ' We do not propose to withdraw the allowance given for repair of arms and accoutrements, which is 30 rupees per mensem in all batteries except mountain batteries, in which it is 20 rupees per mensem. This allowance corresponds to what is given in the cavalry and infantry for a similar purpose, and it is convenient to leave the duty of providing for these repairs in the hands of officers commanding batteries. Nor do we propose to interfere with the small allowances given for the supply of pots for soaking gram, and for cavessons and petty stores, which may also most conveniently remain in the hands of commandants of batteries. There remains one description of contract allowance regarding which we have as yet come to no decision. It is that of 2 rupees per mensem for each horse, and 1 rupee for each mule of a mountain battery. Though called "shoeing allowance," what is called line gear has to be provided out of these sums. This includes blankets, headstalls, nosebags, picketing ropes, and pegs, and it is asserted that this part of the contract does not pay the actual outlay. It is believed that it used to be ample, but the enclosures of this letter go far to show that, with the increase of articles required to be kept up, the superior quality perhaps now demanded by inspecting officers, and a rise in prices, this contract is usually unprofitable. Indeed, it appears almost certain that if the contract system were continued this contract would have to be modified. With respect to this contract, we beg to refer your Lordship to our Secretary's letter, No. 1645, of the 30th March 1874 to the Adjutant General, in which the opinion of his Excellency the Commander in Chief is asked. It appears probable that it would be more conducive to efficiency to leave in the hands of the major the arrangements for shoeing the horses of his battery, and for the supply of the minor articles detailed in the last paragraph, and we shall await the expression of the views of Lord Napier of Magdala as to whether this contract should be withdrawn wholly or in part, or otherwise modified; and we have especially desired to know whether it is absolutely necessary to keep up all the articles no required by regulation to be maintained out of this contract allowance. We therefore propose to defer to recommend to your Lordship whether this allowance shall be retained or withdrawn, or modified, until we have received the Commander in Chief's reply; but we do not apprehend that any decision that may be arrived at with respect to this allowance will materially affect our calculations as hereafter given, save in so far as it may be proved that the existing allowance is insufficient for the supply and repair of such articles of line-gear as are indispensably necessary for efficiency.'

Q. 282.

" 30. Reference to the Table of Contract Allowances will show that these items formed one-half of the total.

" 31. The Secretary of State for India in Council expressed his approval of the views submitted by the 'Governor General of India in Council,' and sanctioned that these officers should receive the pay and allowances of their rank though still being in receipt of contracts.

Artillery Officers' Memorials, 1875, page 32.

" ' 6. Certain small contracts you propose, for reasons given in paragraph 8, to leave still in the hands of commanding officers of batteries. 7. The question of withdrawing or modifying the contract usually known as the shoeing contract you propose to consider hereafter, when you shall have received an expression of the Commander in Chief's opinion on the subject. 8. You have arrived at the conclusion that the net increased cost due to these measures will probably be over 30,000 £ a year, but must be under 40,000 £. 9. Your Government, however, consider the expenditure to be necessary on the ground that, as officers have been given a certain rank, they, not unnaturally, look to receive the pay of that rank, and that the reply that the higher pay is not given, because they are assumed to make a certain profit out of battery contracts will never be satisfactory to those concerned. 10. I approve of these proposals, and authorise you to carry them into effect from the date named, viz., the 1st April 1875, or from any other date which you may think it expedient to fix.'

" 32. On the 29th January 1875, the Government of India further addressed the Secretary of State of India.

" ' His Excellency has represented that commanders of batteries are, as a body, opposed to the continuance of the contract, even at an increased rate; that it imposes on them a thankless task, subjecting them frequently to undue suspicion, and placing them in a false position with their subordinates as well as their superiors; and that, in view of this opposition, it is scarcely expedient that the contract should be continued, especially as it is doubtful whether officers could legally be compelled to carry it on if they objected to do so.'

East India Artillery Officers' Memorials, 1875, page 33, par. 3.

" ' 4. We have therefore now resolved on withdrawing all contract allowances in the artillery, with the exception of two, those for stationery and repairs of arms, and for shoeing. 5. The first of these allowances is similar to that granted in the cavalry and infantry, but we have, on the representation of the Commander in Chief as to the inadequacy of the present rates, which have, no doubt, hitherto been supplemented by the profits from the other contracts, increased it to the following :—

	Rs.
" ' Garrison batteries - - - - -	45
' Field, heavy, or mountain batteries - - - - -	50
' Batteries of horse artillery - - - - -	55

" ' 6. A company of infantry is allowed 20 rupees per mensem for these services, and  
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'the above rates for the artillery have been based on a consideration of the far larger number of men, native establishments, horses, stores, &c., attached to batteries, involving many extra returns and additional correspondence. 7. The second allowance which we propose to retain is that for actual shoeing, which will be paid, according to the practice in England, to the farrier serjeant.'

East India, Artillery Officers' Memorials, 1875, page 37.

"33. These fresh proposals were approved of without comment by the Secretary of State for India in Council.

Parliamentary Papers, Artillery in India, 1859, page 19.

"34. When the Royal Artillery proceeded to India for the first time during the mutiny, the Secretary of State for War, on the representation of His Royal Highness the Commander in Chief, objected to the extension of that system to the British batteries. After an inquiry by the Government of India in 1859, it was extended as a matter of economy. When the income tax was in force in India, contracts were excluded from it as forming no part of income. Between 1869-71 every branch of military expenditure in India was most carefully scrutinised, more especially the artillery, and reductions were made in the military expenditure of so stringent a character that both the late Lord Sandhurst and his successor, Lord Napier of Magdala, declined to be parties to further reduction. The latter submitting :—

Q. 544-6.

East Indies Act XXXII. sec. 129, 1860.

Parliamentary Papers, East India, Military Expenditure, 1871.

" 'It cannot be other than a subject of regret that I should be so unfortunate as to differ in opinion with the other members of the Government on the question of reducing the army; but my regret would be still greater were it not for the support which I derive from the opinion of the Government of 1868, of which Sir W. Mansfield and Sir H. Durand were members.

Ditto, Minute, Lord Napier of Magdala, 18 October 1879, page 364.

" 'Before reducing further the means by which we hold India, it would be wise to make a vigorous and impartial investigation into the means of reducing the civil expenditure.'

Q. 280.

"Yet the amount of these contracts was not touched. On 15th May 1873 the Government of India pointed out that there was no difficulty whatever in at once putting an end to the contract system, if desired by the India Office; and when the India Office decided, in 1874, to give these officers majors' pay and allowances, it did so, as has been stated, under the full impression they were to continue to carry out such contracts as should prove most advantageous to the State, although even the amounts were to be increased; and in all probability had it not been found to be illegal, they would have had to do so. Taking these matters into consideration, and that this contract question did not affect the majors of garrison batteries, ordnance establishments, or Royal Engineers, not in receipt of consolidated pay; a fact strongly impressed on the Secretary of State for India in Council, by the Government of India on 15th May 1873, it was evident that there was a more important question at issue.

Q. 282.

Q. 280.

"35. It was frankly admitted to your Committee by the India Office, that it was not the real reason by which it had been actuated in 1872, and that the cause was, that the Council of India considered that they had not been consulted previous to the issue of the Warrant, and consequently they refused to recognise it.

Q. 1820-30.

Q. 1838.

Q. 1636-7.

Q. 1661.

Q. 805-806.

Q. 780-781.

Q. 97. 147-148.

Q. 33-77.

Q. 781.

"36. On this point the evidence is conflicting. The assertion that the Council of India had not been consulted, had been made in 1874 to the Committee on East India Finance, when it was controverted by Lord Cardwell, who informed your Committee that he distinctly adhered to the evidence he gave in 1874. He stated that, subsequently to his letter of 8th February 1872, the matter was fully gone into by him with the Secretary of State for India, and the Secretary to the Military Department at the India Office; that the India Office submitted an alternative proposal, and that he made the alterations in the Warrant previously referred to, to meet the views of the India Office, with the object of maintaining a cordial understanding; and that he was under the conviction he had obtained 'the entire consent of the India Office to the arrangement.' As to his references to the contracts, they were simply with a view of pointing out how, in his opinion, any difference between the War Office and the India Office on the question of the promotion of these majors might be reconciled, and in respect to this he spoke, not of his own knowledge, but only of what he had been given to understand.

Q. 17, 19, 20, 28, 33, 34, 66, 84, 85, 86, 126, 127.

5th April 1878.

Q. 84-5.

"37. His Royal Highness the Field Marshal Commanding in Chief, informed your Committee he was under a similar impression as regards the consent of the India Office, and that he concluded the Council was kept informed through the Secretary to the Military Department of all that took place.

Q. 1273-1333.

Q. 781. 783-5.

"38. On the other hand, the Council of India state that they are not ruled by what the Secretary of State for India may say or do, except in Council, and the late Secretary to the Military Department asserts that he informed Lord Cardwell nothing he said could in any way bind the Council, and that the alternative proposal did not emanate from the India Office, but was simply his own proposal.

Q. 782-6.

"39. The alternative proposal referred to raised the whole question at issue; it was to the effect that these officers should have the brevet rank of major. In India, in accordance with the pay regulations of 1796, brevet rank carries no addition whatever of pay. Lord Cardwell insisted on substantive majorities. This *ipso facto*, according to the then regulations in India, did carry the pay of the rank. As to what that pay was, or how it

was

was made up, Lord Cardwell did not inquire, but he concluded that these officers would in some manner be placed in a fair position as field officers, and at the request of the India Office, as he understood, to enable them to do so, he made the alterations in the Warrant. It is clear he would have made no alteration, had he been under the impression that it was the intention of the India Office to leave these officers when promoted in exactly the same position as regards pay in which they were previously.

Q. 86.

"40. The Warrants were duly formally submitted to the Secretary of State for India in Council on 15th June. They were not approved by Her Majesty till the 5th July, up to which time no fresh objection had been made. The error, therefore, if error there was, into which Lord Cardwell fell, was not an unnatural one.

"41. But it is further openly admitted, on behalf of the Council of India, that their decision was also purposed with a view to a further question, viz., the right of the Council to be consulted as regards the organisation of the British troops in India.

Q. 1617-18.

"And the Council alleges, 1st, that these officers simply performed the same duty subsequently which they had done previously; 2nd. That the pay in India is of such an exceptional nature that an officer, on captain's pay in India, held a more beneficial position than an officer on major's pay in England or the Colonies; 3rd. They refer, as a precedent, to certain lieutenant colonels of Artillery and Engineers, who, between 1857 and 1872, received major's pay.

Q. 1612.

Q. 1655-7.

Q. 1286.

"42. As regards the first of these allegations, the duties could not be exactly the same, as they had, in addition, to perform field officer's duty; but the question which had been decided by the Cabinet was, that their regimental duties had become of such a nature that it was necessary that they should be entrusted to a field officer.

"43. In the native regiments officered from the staff corps, captains, and substantive majors, and lieutenant colonels, in command of wings, perform precisely the same duties, yet receive respectively the staff corps pay of their rank.

Indian Army List.  
Parl. Papers, Army  
Amalgamation  
(India), 1861, p. 19,  
par. 22-3.

"44. As to the comparison of Indian pay with English net pay, it was pointed out to your Committee by His Royal Highness the Field Marshal Commanding in Chief that where British troops are stationed, whether in India, the Colonies, or England, you must take into account the allowances of various kinds which are made in addition. As regards India and England, the matter is thus laid down by the Secretary to the Military Department to the Government of India, when the question was being considered of the relative proportion of the command pay.

5 April 1878.  
Q. 63-67.

"It is true that, as regards pay only, the relative proportion of command money to 'pay of rank is less than in England, but, on the other hand, the pay in India represents the total advantages received by the officer, and out of this he has to provide his own quarters, fuel, and lights, his tents, carriage, and followers, and has often to travel long distances at his own expense. The major of artillery in England receives free quarters, fuel, and light, has no camp equipage to keep up, rarely moves on duty save at the public expense, and is allowed soldier servants to whom only a moderate extra remuneration is given. He has also, it is believed, certain advantages in the way of reduced cost for forage. When all these advantages are taken into consideration his Excellency in Council thinks that the disproportion between command money and pay of rank in India, as compared with the practice in England, will be found no longer to exist, or at any rate to have much diminished.'

Secretary Military  
Department,  
Government of  
India, to Adjutant  
General, India,  
No. 960, 19 January  
1875, p. 37.  
East India, R. A.  
Memorial, 1875.

"45. At Hongkong, the Straits Settlements, and Ceylon, to which particular reference was made, it appears from a return furnished by the Accountant General at the War Office, that the total pay and Colonial allowances of a major of Artillery and Engineers, between the years 1872 and 1874, was considerably in excess of his then Indian pay.

App. 5.

"46. With reference to certain lieutenant colonels of Artillery and Engineers who were placed on majors' pay in 1858, the papers on the subject which were laid before Parliament at the time elucidate, in the clearest manner, the control which the War Department maintained over the organization of the East India Company, as well as the British troops, through the Board of Control, and how carefully every effort was made to put officers in India on a footing equivalent to what they held in England.

Q. 880-2.

"47. On the 1st April 1858, a letter was addressed by the then Governor General of India, Lord Canning, to the Court of Directors, calling attention to the supersession of the Indian Artillery and Engineers by the Royal Artillery and Royal Engineers, who had been sent to India on account of the mutiny. Since the beginning of the present century the British Ordnance Corps had not been stationed in India, and their organisation differed in many respects from that of the East India Company. The latter as regards field artillery and garrison batteries, were still based on the infantry battalion system. There was a major to each battalion, and the companies officered by first captain, one lieutenant, and one second lieutenant. The Royal Artillery were organised into brigades for administrative purposes, but the battery was the unit, with five officers, viz., two captains, and three lieutenants; the junior captain being termed second captain. The rank of major had been abolished in the British Ordnance Corps in 1827, and that of second lieutenant in 1855. The Government of India had come to the conclusion that the Royal Artillery and the Royal Engineers would, for the future, form a component

Parliamentary  
Return: Corre-  
spondence relating  
to the Artillery Forces  
in India, p. 43.

\* Parliamentary Return; Correspondence relating to the Artillery Forces in India, p. 59.

† Ditto, p. 48, p. 50.

‡ Parliamentary Return, Royal Artillery Forces in India, 1869, p. 52.

§ Ditto, p. 54.

|| Ditto, p. 58.

¶ Ditto, p. 56.

\*\* Ditto, p. 133. 155-6.

part of the troops in India; and that, consequently, it was incumbent to place the Indian corps on a footing of equality, in accordance with the long-standing custom in India.\* The attention of the Court of Directors was called to that Despatch by the President of the Board of Control. This was acknowledged by the Court of Directors. They requested the sanction of the War Department to promote their majors to lieutenant colonels; that 144 lieutenants of Artillery, and 66 lieutenants of Engineers be made second captains, and to do away with the rank of second lieutenant.† These proposals were approved of by the Board of Control and submitted to the War Office.‡ In reply, the Court of Directors was informed that the Secretary for War and the Commander in Chief considered it was undesirable to deal with this question apart from the general one of the reorganisation of the whole Indian army.§ On which the Court of Directors again urged on the Board of Control the importance of getting the sanction of the War Department to their proposals; and on the Court of Directors being informed that General Peel had withdrawn his objection,|| the Court of Directors authorised the Governor General of India in Council to carry out the changes proposed.¶ The Court at the time concluded the officers concerned would receive the pay of their rank, until it was brought to their notice that certain lieutenant colonels of the Royal Artillery received only majors' pay, when the Court especially directed 'the same distinction as regards pay and allowance must be observed in India, and in the same proportions in the Indian Artillery and Engineers, as in Her Majesty's Artillery and Engineers,\*\* viz., 'one-fourth in the Artillery, and one-fifth in the Engineers.' Consequently, one-half of the majors so promoted at once received lieutenant colonels' pay. When the rank of major was abolished in the Ordnance Corps in 1827, it was, by Royal Order, conveyed through the Master General, and it was distinctly laid down that no increase of pay would ensue, but when second captains were appointed to the Ordnance Corps in 1804, they were appointed with captains' pay. In 1858 they received Indian allowances, similar to those of first captains, the only difference made between them in the total of Indian pay being 1s. 1d. a day, the difference of their British pay. The Warrant which created the first captains majors, placed the lieutenant colonels on majors' pay on to lieutenant colonels' pay. This was accepted without comment by the India Office.

Q. 4.

"48. As to the main point, Lord Cardwell observes, 'I stated in 1874, and it will be found in this Blue Book which I have before me, which is the Report of the Committee on East India Finance, that I consider that the organisation of the British Army is a matter for the consideration of the Crown and the responsible advisers of the Crown at home; and of course the Secretary of State for War has a special responsibility in that respect; and I do not hold that measures which are deemed by the Government to be necessary for the organisation of the British Army can be suspended out of any consideration specially and only applicable to India.' And His Royal Highness the Field Marshal Commanding in Chief observes, that wherever British Troops are stationed there can be but one system of organisation. This question was fully gone into by the Committee on East India Finance in 1874, and in its report it laid down the principle that 'India, as a component part of the Empire, must be prepared to share in the cost of a system, the expense of which may be enhanced for Imperial purposes.' And the late Secretary to the Military Department of the India Office, after reference to the evidence which he then gave, said, 'I am still of opinion that we cannot interfere officially with the military organisation of the British Army.' Nevertheless, the Council having entire control of the Finances of India, a control which they can exercise irrespective of the Government, can do so indirectly.

Q. 906.

Q. 1697.

Q. 71.  
5th April 1878.

Q. 1694.

"49. Lord Salisbury states that the powers conferred on the Council of India by the Act of 1858 are right, in so far 'that there might be a great and serious injustice to the taxpayers of India, if it was in the power of any department here at home to lay charges upon them at its will.' On the other hand, he recognises the fact 'that the condition in which the administration of the revenues of India was left by the Act of 1858, undoubtedly does expose the Public Service to the inconvenience of disputes between those who manage Indian revenues, and those who manage English revenues.' He adds, 'the prerogatives of the Council are extremely valuable, but no doubt somewhat anomalous, and I am afraid of any circumstance which shall give that anomaly any undue emphasis.'

Q. 1695.

Q. 1789.

Q. 1790.

"50. The Council has, however, not always taken this extreme view. In 1860 a radical change was made in regard to the army in India. The local European troops were abolished, and India was, for the future, to rely on a British contingent. This affected the finances of India, for better or for worse, to a large extent, which could not be then calculated. The subject was not officially brought before the notice of the Council by the Secretary of State for India, until it had been decided by the Cabinet. The Council decided, 'that the Government having come to that decision, they thought it was too late for them to express assent, or to attempt to alter that decision.'

Hansard, vol. 159.  
Statement of Sir  
C. Wood (Lord  
Halifax), 15 June  
1860, in reply to Sir  
De Lacey Evans.

"51. Your Committee suggest that it is not for British officers to have to consider grave constitutional questions, in order to understand why 'the improvement of their condition,' pledged to them by the Secretary of State for War in Parliament, and approved of by Parliament, has been withheld from them because they were serving in India. Their duty is to serve where called upon, and they have to rely entirely upon the Government as regards their personal interests; and it is submitted that because full re-

liance

liance can be placed on their unswerving loyalty as British officers and gentlemen, they should not be treated in a way far different to that which would have been meted out to the private soldier. 'We may be wrong,' said the Marquis of Salisbury, before the Committee on East India Finance, 'but we are always a little nervous about anything that can give discontent to the European soldier in India.'

East India Finance Committee, 1874, Q. 2140.

"52. Disputes between public departments affecting bodies of men in the public service are matters for the consideration of the Government. Lord Cardwell intimated in 1874, as regards this matter, that the Secretary of State for India made no objection to his proposal in the Cabinet.

Ditto, Q. 1686-1789.

"53. In the present instance the action of the Council affected a body of officers who had long been encouraged to look forward to an improvement in their position. No less than 87 of the first captains of Artillery thus promoted in India were already brevet field officers, either for distinguished conduct in the field, or from length of service; and when, on the 11th July 1872, the Council of India determined not to recognise these officers beyond simply their titular rank, the question had ceased, being simply a difference between the India Office and the War Office; the measure had been adopted by the Government as one that was 'expedient,' and had been approved of by Parliament.

Q. 12.

"54. There is further connected with this case a peculiar circumstance. Several of these officers had belonged to the corps of the Artillery and Engineers of the late East India Company. By the Acts of 21 & 22 Vict. c. 106, Clause 56, they were entitled to 'the like pay, pensions, allowances, and privileges, and like advantages as regards promotion and otherwise, as if they had continued in the service of the said Company.'

"By 23 & 24 Vict. c. 100, it was enacted that the above rights 'should be maintained in any plan for the re-organization of the Indian Army.' In 1861, when that re-organization was effected, the officers of the late Indian Artillery were requested to volunteer for general service. In the General Order by the Governor General of India in Council, 10th April 1861, which intimated this fact to them, it was stated (paragraph 23), 'in the execution of the measures to bring about the proposed amalgamation it is the intention of Her Majesty's Government that the pledge that due regard should be paid to the rights and claims of the officers of Her Majesty's Indian forces shall be scrupulously adhered to.' . . . And they were further informed (paragraph 30), 'Artillery officers willing to serve out of India, and who may be permitted to do so, will receive commissions in the Royal Artillery, and will draw the pay and allowances fixed by Her Majesty's Regulations for that arm of the service, according to the situation and locality in which they may be serving, but their promotion will continue to go on in their original regiments.'

Royal Commission, East India, Officers' Memorials, 1864, Report. Paras. 17-26, and App. p. 45.

Ditto, p. 145.

"On 28th October 1861, a General Order was addressed to the Indian Artillery, expressing 'the heartfelt gratification which his Royal Highness has derived from the high military feeling which prompted them to come forward almost in a body.' And they were then also informed that for the future they were to conform to the organisation of the British Royal Artillery. Between 1872 and 1874, many of them were serving in Great Britain and the Colonies on British pay and allowances; those in India claimed their right to the pay of their rank, not only under the regulations in force, but under the Parliamentary guarantees and the pledge made to them. His Royal Highness the Field Marshal Commanding in Chief considers they are so entitled 'most assuredly,' and observed, 'I cannot imagine that you can give a man substantive rank without giving him the pay to which that rank entitles him.'

App. No. 6, p. 18, Parliamentary Return, East India, Army Amalgamation, 1861, p. 24.

"The Marquis of Salisbury, speaking as Secretary of State for India, admits that the officers as a body had fair grounds for their claims, but considers that these should be paid by the Imperial Government as 'the authority which had caused the claims.' Nevertheless he submitted to his Council a compromise, which was rejected by 8 to 4. It is true, he assigns as a reason, the desire not to bring the Council in conflict with the House of Commons, where officers might find many friends; but, had the India Office not considered these officers equitably entitled, it would not have taken years to have determined to refuse them, much less would a compromise ever have been proposed by the Secretary of State; and if army grievances do at times command the serious attention of the House of Commons, it is because they affect a body of men who have to risk their lives whenever called upon, and who have no remedy in a court of law.

Q. 69, 70.  
Q. 1696.  
Q. 1774.  
Q. 1662.

"55. Taking into consideration the whole circumstances of the case, your Committee are of opinion—

"1st. That the delay which took place in coming to a decision on these claims, whatever their merits may be, and whatever that decision might be, does of itself constitute a grievance, and displays in a marked manner the absence of a common understanding between the War and the India Offices, as regards the position of the British Contingent in India, which, in the case of non-commissioned officers or men, might lead to serious discontent.

2nd. That the Act of 1860 (23 & 24 Vict. c. 100) was decisive as regards the question of the organisation of the British Army being obligatory on the British Contingent in India, and that such contingent whilst serving in India, officers as well as men, are entitled to the Indian pay of their several substantive ranks.

3rd. That contracts in India form no part of an officer's pay; that they were established

blished by the Government of India for the benefit of that Government; that the officer had no option as to carrying them out, though making it obligatory has since been found to have been illegal; that the profits out of such contracts were their indemnification.

"4th. That the division of the pay of the majors of Artillery into pay and command pay, not having had the result for which it was purposed, for the future the pay should, in accordance with the statement made to, and approved of, by Parliament in 1872, be made 'similar,' and net 'equivalent,' to that of majors of the line."

DRAFT REPORT proposed by Lord *George Hamilton*, brought up, and read the first time, as follows:—

"1. In inquiring into and reporting upon the claims made by certain officers of the Royal Artillery and Engineers upon the Indian Government, your Committee think it necessary to first make clear the exact position, as regards their pay and allowances, of officers and men of the British Army serving in India or the Colonies.

"2. Every officer in the British Army is entitled, in whatever part of Her Majesty's Dominion he may be stationed, to the British pay of his rank, which pay is fixed and regulated by Royal Warrants and Regulations issued and signed by Her Majesty's Secretary of State for War.

"3. In certain of the Colonies the pay is fixed or supplemented by a Colonial allowance paid, and in some cases fixed, by the Colony in which the officer may for the time being be stationed.

"In India all British officers serving upon the Indian Establishment receive from the Indian Government pay and allowances more or less in excess of that to which they are elsewhere entitled. Over that portion of the Indian pay and allowances in excess of the pay and allowances specified by Royal Warrant or regulation, the Indian Government claim and exercise an undisputed control.

"4. In 1872 the India Office received intimation that Lord Cardwell, then Minister for War, proposed to restore to the Ordnance Corps the grade of major; the Duke of Argyll, fearing that such an act might lead on the part of the officers so promoted to a claim for the allowances and pay given by the Indian Government to officers already holding that rank, and serving in India, addressed, as Secretary of State for India in Council, the following letter to the War Office:—

"5.—

"Sir,

"India Office, 5 February 1872.

"I am directed by the Secretary of State for India in Council to request that you will bring to the notice of the Secretary of State for War that of the various changes in the organisation of the British Army which either have been actually made from time to time, or which may be now in contemplation, many will inevitably affect for good or evil the financial interests of British India, and I am to express a hope that all proposed measures of this nature may be not only considered by Mr. Cardwell in their possible effect upon the military expenditure of that country, but that they may be referred for the expression of an opinion on the part of the Secretary of State for India in Council before being finally adopted.

"2. The Duke of Argyll has been led to urge this point upon the attention of Mr. Cardwell in consequence of information having reached him that it is in contemplation to introduce a change in the organisation of the Royal Artillery which, whatever may be its financial effects in this country, would lay upon the finances of India a large additional burden, of the necessity of which his Grace is not at present in a position to form an opinion.

"3. His Grace has reason to believe that it is proposed not only to restore to the Corps of Artillery the grade of Major, which was deliberately abolished in 1827 as being unsuited to that arm of the service, but to substitute that grade regimentally for that of First Captain.

"4. The immediate effect of this measure on India would be to increase the pay of 120 officers by about 420 £. per annum, thus making an immediate addition of 50,000 £. a year to the Indian Military Expenditure, without calculating the effect that would be produced if, as it is presumed would be the case, a similar course were followed as regards the Engineers.

"5. The Duke of Argyll cannot doubt but that Mr. Cardwell will recognise the importance of regulating military arrangements in this country, as far as sound principles of military organisation will admit, by a reference to the interests of the Indian, no less than to those of the more wealthy British, taxpayers, and that neither the particular measure to which I have referred, nor any other measure having a similar bearing on the interests of the former, will be finally sanctioned until the views of the Secretary of State in Council have been recorded upon the subject.

"I have, &c.

"The Under Secretary of State for War."

(signed) "T. T. Pears.

" 6. To which Lord Cardwell replied:—

" ' Sir,

" ' War Office, 8 February 1872.

" ' I am directed by the Secretary of State for War to acknowledge the receipt of Major General Sir T. Pears's letter of the 5th instant, and in reply I am to request that you will state to the Secretary of State for India in Council that Mr. Cardwell admits that Indian financial considerations ought not to be overlooked in dealing with questions of military expenditure.

" ' He has always acted on this principle, and more especially in the reductions, both as respects Artillery and Cavalry, which were made when the large financial deficit of India was discovered in 1869-70.

" ' But he must, at the same time, consider that what is just and expedient, or even necessary for the British Army, cannot be set aside because the peculiar arrangements of India render the change more expensive in that country than in this.

" ' The financial arrangements of India and the military allowances are in the control of the Secretary of State for India in Council, and if the allowances are too large, the Secretary of State in Council can reduce them only, considering the opinion of the Secretary of State for War so far as the fair position of officers of the British Army may require.

" ' In the particular case of Majors of Royal Artillery, which Mr. Cardwell gave the Duke of Argyll to understand was under consideration, Mr. Cardwell believes that the contract allowances of Captains of mounted batteries are so beneficial in a pecuniary sense to the holders, being much in excess of what is required for the efficient maintenance of the batteries, as practically to make the emoluments of the Field Artillery Captain greater than those of a Major of the Line, and he sees no reason therefore why, if the rank of Major shall be established in the Royal Artillery, the expense to India need be increased by the sum of 50,000 l.

" ' I have, &c.  
(signed) " ' J. C. Vivian.

" ' The Under Secretary of State for India.'

" 7. It will thus be seen that officers of Artillery in command of mounted batteries in India received through these contract allowances considerable emoluments in addition to their pay and allowances by the Indian Government, so much so, that in the case of four armed batteries, not under the contract system, their commanders were paid by the Indian Government an extra commission and allowance of 250 rupees a month.

" 8. Lord Cardwell wishing to meet, as far as he was able, the financial objections of the India Office to the proposed measure, made, in the Warrants about to be issued, an alteration by which the pay of the mounted Majors would be not 16 s. per diem, the pay of Majors of Infantry in England, but 14 s. 6 d. per diem, with the addition of 1 s. 6 d. only to those in command of batteries. The Warrants so altered were forwarded to the India Office in order that Lord Cardwell may be informed of the opinion of the Secretary of State for India in Council upon the measures proposed. (Despatch, 15th June 1872.)

" 9. In reply, the Secretary of State for India in Council, whilst assenting generally to the measures proposed, stated, as regards the Indian pay and allowances of the officers about to be promoted, ' that as the officers now holding the position of First Captains in those two corps in India are liberally remunerated for their services in that country, he does not consider any change in their present rate of Indian pay and allowances is called for by the proposed change of rank and destination.' (Despatch, 10th July 1872, page 128.)

" 10. No reply or remonstrance to this declaration was received from the War Office. Subsequently a Parliamentary Return was published by the War Office, signed by Mr. Campbell-Bannerman, giving ' total annual cost that will fall upon this country by the proposed change: British Establishment, 20,684 l.; Indian Establishment, nil.' (See Question 119.)

" 11. The Royal Warrants, with the correspondence relating to them, were forwarded by the India Office to the Indian Government on the 18th July 1872, with instructions to make their contents known to the army in a General Order. With a view of improving the position of officers commanding batteries in India, not in receipt of contract allowances, a monthly increase was made to their pay of 70 rupees a month.

" 12. In accordance with these directions, the Government of India published a General Order on the 15th August 1872.

" 13. The officers affected by the Royal Warrant were dissatisfied with these arrangements, and many of them petitioned the Indian Government, claiming the Indian allowances and pay received by majors of other branches of the Service.

" 14. In forwarding these memorials to the Home Government, the Government of India, in a Despatch, dated 15th May 1873, suggested the abolition of the contract allowances from the 1st April 1874, by which, it was estimated, an annual saving of 13,000 l. would be effected, and such an increase to the pay and allowances of the recently promoted officers as would tend to place them on an equality with similar grades in the Infantry. In reply, the Secretary of State in Council desired fuller information as to the



cost of this concession, and being informed that, including the saving effected by a partial abolition of the contract system, it would involve an annual increase to the military estimates of about 30,000 £. a year, he sanctioned the proposed expenditure from the 1st April 1875.

“ 15. These measures were carried out and put in effect by the Indian Government on the date fixed, but so far from satisfying the officers concerned, they led to fresh petitions, in which a demand was made, as a matter of right, that retrospective effect should be given to these concessions, and that the increased pay and allowances should commence not from the date fixed by the Indian Government, viz., the 1st April 1875, but from the date of the publication in India of the Royal Warrant signed by the Secretary of State for War.

“ 16. Your Committee have carefully investigated this claim, the grounds upon which it is based, and the consequences to which, if confirmed, it must ultimately lead.

“ 17. The claim is founded upon the assumption that the issue of a Royal Warrant by the Secretary of State for War must affect the allowances granted to officers serving in India by the Indian Government. It is clear from the evidence before your Committee that it is on account of the exemption of British India from the operation of Royal Warrants, regulating pay and allowances, that officers serving in that country receive from the Indian Government pay and allowances much in excess of the emoluments attached to their rank elsewhere. To accept these emoluments, and yet to claim that they should be regulated by an instrument which, if it were operative in India, would deprive them both of that which they alone have received, as well as of that which they claim, is self-evidently unreasonable.

“ 18. A reference to the evidence of Lord Cardwell shows that he felt strongly the impropriety of such a contention, for when he asked if the issue of a Royal Warrant would carry Indian allowances and pay, he replied, ‘ It is not the case; it cannot, under the Act of Parliament, be the case, and, in my opinion, it ought not to be the case.’ (Answer 132.)

“ 19. Neither can your Committee ignore the consequences of admitting the validity of the claims of these officers. By Act of Parliament an absolute control over Indian expenditure has been deliberately conferred upon the Secretary of State for India and his Council, and they alone are responsible to Parliament for the use they may make of this power. It has been stated before your Committee that there is no part of the annual expenditure borne by the Indian revenues more difficult of control and more likely to increase than the military charges connected with the employment of British troops in India. To sanction the principle that the issue of a Royal Warrant by the Secretary of State for War must, *ipso facto*, regulate Indian pay and allowances, would be to entail the most important functions now exercised by the Secretary of State for India in Council over the most irrepressible portion of the Indian expenditure. The fundamental principle of the most important Act of Parliament for the government of India would be infringed, and a Secretary of State not responsible to Parliament for the administration of India, might in future be able to impose charges upon the revenues of that country contrary to the wishes and protests of the statutory authority specially appointed for their protection.

“ 20. Whilst declining to support the claims of these officers, your Committee regret that so much delay occurred on the part of the Indian authorities in replying to the complaints made to them. That the grievances affirmed in these petitions were the result of a misconception of their position as regards their Indian pay and allowances, rendered it the more expedient that a full and frank explanation should have been accorded to the petitioners. Your Committee therefore suggest, that rules for the rapid transmission of complaints from India be considered by the two officers concerned, with a view of establishing such a simple and rapid channel of communication as will prevent, on the part of any of the British troops serving in India, a repetition of a similar understanding.”

DRAFT REPORT proposed by Sir *Walter Barttelot*, brought up, and read the first time, as follows:—

“ 1. IN the year 1872 it was determined by the Secretary of State for War, with the concurrence of the Field Marshal Commanding in Chief, to give the rank of field officer to first captains of artillery and engineers. The principal reason assigned for this step by Lord Cardwell, in the House of Commons, was the increased importance of the command of a battery, which appeared to be at least equal in responsibility to the command of the wing of an infantry regiment.

“ 2. This resolution having been formed, and announced to Parliament, a Warrant was issued in July 1872, carrying it into effect.

“ 3. The Warrant, however, while conferring the higher rank upon the officers in question, did not assign to them a rate of pay precisely identical with that of majors of line regiments. Had it done so, the ratio of pay would have been 19*s.* 6*d.* a day for majors of horse artillery, and 16*s.* for majors of field and garrison artillery; whereas the rates

rates actually sanctioned by the Warrant were 18*s.* and 14*s.* 6*d.* respectively, with 1*s.* 6*d.* command money. The reason for this division of the pay was stated in a letter from the War Office to the Treasury, 23rd May 1872, to be 'in order to avoid certain complications when these officers may serve in India.'

"4. There had, in fact, been a prolonged course of communications (mostly of a personal and informal character) between the India Office and the War Office during the early months of 1872 upon this subject, the communications chiefly turning upon the question whether the Indian Government might not indemnify themselves in great measure for the expense of the proposed promotion, and at the same time increase the efficiency of the service, by abolishing the system of contract allowances, which had long prevailed in India.

"5. Under this system the officer in command of a battery received a certain fixed allowance, out of which he supplied all the material requisite to maintain his battery in efficiency. This allowance is admitted on all hands to have been beneficial, in a pecuniary sense, to the officer, who sometimes made a large profit, although in active service or on the march this profit might disappear.

"6. The policy of putting an end to, or modifying, this system was, of course, a matter for the decision of the India Office alone, and was recognised by the Secretary of State for War to be so; but the change in the rate of pay, above referred to, was made in order to facilitate such an arrangement, if the Secretary of State for India in Council determined to adopt it.

"7. The Secretary of State for India, however, after the Warrant was issued to the Army, did not think it necessary or expedient, in announcing to the Army in India the alteration in rank, to assign any higher pay to the new majors than they had received as first captains; the reason being thus given in a letter to the War Office, 11th July 1872: 'His Grace desires me to say that as the officers now holding the position of first captains in those two corps in India are liberally remunerated for their services in that country, he does not consider that any change in their present rate of Indian pay and allowances is called for by the proposed change of rank and designation.'

"8. Accordingly, when the Royal Warrant was published in India on the 15th of August 1872, it was accompanied by an intimation to the following effect:—

" 'The Indian pay and allowances of regimental majors of Royal Artillery and Engineers will be the exact amount now drawn by first captains of those corps. The Governor General in Council further notifies that, with a view to improving the position of officers of Royal Artillery commanding garrison batteries, the allowance for that command will be increased from 30 rupees to 100 rupees per mensem. The increased rate of command allowances sanctioned for garrison batteries of Royal Artillery will come into effect from the 1st August 1872.'

"9. This arrangement, however, failed to give satisfaction to the officers affected, who at once began to present appeals to the Indian Government, claiming the full pay of their rank.

"10. The Government of India, in forwarding certain of these memorials to the Secretary of State, under date 15th May 1873, express their opinion on the subject thus:

" 'On the whole we have come to the conclusion that it would be expedient to grant the higher rates of pay, and to withdraw the contract allowances for repairs of carriages and harness of batteries of Royal Artillery.

" 'We think this will be the most satisfactory course. It is true that in most cases the profit from this contract exceeds the difference of pay between that of a captain and a major, but any prolonged active service would greatly reduce this rate of profit, or perhaps cause it entirely to disappear. Further, majors of engineers receive no contract allowance whatever, and the grant of 100 rupees a month, sanctioned by your Grace, to majors in command of garrison batteries, still leaves them with much less pay than majors of infantry.

" 'We would therefore propose that, from the 1st April next, all majors of Royal Artillery and Royal Engineers in India should receive the pay recently allowed to lieutenant colonels of these corps on major's pay, and that the contract allowances for repairs of carriages and harness should cease; command money and allowance for shoeing, &c., and for repairs of arms, continuing as at present.

" 'From the same date we would propose to discontinue the higher command allowance of 250 rupees and 100 rupees given to officers in command of heavy field and garrison batteries respectively, restricting them to the lower rate of command money given to officers commanding batteries of horse and field artillery. The former was originally given in lieu of a contract allowance, and the latter was specially sanctioned by your Grace in consequence of the full major's pay not having been given to majors of Royal Artillery.



“ ‘ We desire to submit the foregoing proposals for the sanction of your Grace, and believe that while all reasonable cause for discontent will be removed by the proposed concession to officers of Royal Artillery and Engineers, various anomalies, which may at times lead to inconvenience, will be removed by doing away with the system of contracts.’ \* \* \* \* \*

“ 11. In reply to this Despatch, the Duke of Argyll asked the Government of India to furnish him with a statement of the estimated financial effect of their proposals, and in complying with this request on the 17th April 1874, Lord Northbrook's Government repeated the expression of their opinion that ‘ the expenditure is necessary, for as officers have been given a certain rank, they not unnaturally look to receive the pay of that rank ; and the reply, that the higher pay is not given because they are assumed to make a certain profit out of battery contracts, will never be satisfactory to those concerned, while we do not consider that the contract system itself will for long be generally acceptable to officers of the Royal Artillery.’

“ 12. Finally, Lord Salisbury, on 9th July 1874, accepted the proposals of the Indian Government, using these words :—

“ ‘ You have arrived at the conclusion that the net increased cost due to these measures will probably be over 30,000 *l.* a year, but must be under 40,000 *l.*

“ ‘ Your Government, however, consider the expenditure to be necessary on the grounds that, as officers have been given a certain rank, they, not unnaturally, look to receive the pay of that rank ; and that the reply, that the higher pay is not given because they are assumed to make a certain profit out of battery contracts, will never be satisfactory to those concerned.

“ ‘ I approve of these proposals, and authorise you to carry them into effect from the date named by you, viz., the 1st April 1875, or from any other date which you may think it expedient to fix.’

“ 13. This was accordingly carried out, and since the 1st April 1875, majors of artillery and engineers in India have received the pay of majors in the line, while contract allowances have ceased.

“ 14. The contention of the officers, however, remains, that they ought to have received this increase of pay from the day on which they were promoted in substantive rank ; and thus arise those alleged arrears alluded to in the Resolution of the House under which this Committee was appointed.

“ 15. These are the main facts in this case, as disclosed in the Papers referred to this Committee, and brought out in evidence before them.

“ 16. Your Committee are without any instruction from the House regarding the precise matters as to which they should report their opinion, the resolution which caused their appointment being in these general terms :—

“ ‘ That the Papers respecting the arrears of pay due by the Government of India to officers of the Royal Artillery and Royal Engineers be referred to a Select Committee.’

“ 17. But your Committee presume that the main question referred for their opinion is, whether the claims urged are just, and whether these officers ought or ought not to receive the arrears of pay which they allege to be due for the period between July 1872 and the 1st April 1875. Your Committee do not conceive that they are called upon to pronounce any opinion upon matters affecting the organisation of the army, such as the policy of giving the rank in question, or the policy of maintaining or abolishing contract allowances ; nor upon the relations between the India Office and the War Office, still less upon the constitutional position and statutory powers of the Council of India ; all of which points have been more or less brought into controversy in connection with this subject.

“ 18. Confining themselves, therefore, to the simple point whether or not the majors of engineers and artillery in question have an equitable claim upon the Indian Government, your Committee would express their opinion :—

“ (1.) That those officers ought to receive, in one form or another, the pay of their substantive rank.

“ (2.) That they are not entitled, in addition, to claim the full emoluments of contract allowances.

“ (3.) And therefore that any officer who can show to the satisfaction of the Government that in the interval between July 1872 and 1st April 1875, the profit he may have enjoyed from his contract allowances fell short of the difference between the pay of a first captain and the pay of a major, has a fair claim to the amount of such deficiency ; and in the case of officers commanding garrison batteries, this claim would extend to the whole difference between the two rates of pay, less this special allowance of 100 rupees per month.

“ 19. Your Committee are well aware of the peculiar function which the Council of India fills in regard to the finances of India. By the statute which creates it, it is enacted that ‘ the expenditure of the revenues of India, both in India and elsewhere, shall be subject to the control of the Secretary of State in Council, and no grant or appropriation of any

'any part of such revenues, or of any other property coming into the possession of the Secretary of State in Council by virtue of this Act, shall be made without the concurrence of a majority of votes at a meeting of the Council.'

"20. Your Committee would not only desire to avoid recommending that Parliament should take any action in conflict with that provision, but they fully recognise the importance of supporting the Council in the somewhat ungrateful and difficult task (so well described by Sir F. Halliday in his evidence) which devolves upon it, in the interest of the Indian people, of frequently resisting claims in cases where its members cannot but feel a personal sympathy with the claimants.

"21. But in this instance it appears to your Committee that the expressions above quoted from the Despatches of the Government of India (15th May 1873 and 17th April 1874), which expressions have received the acquiescence of, and have been acted upon by, the Secretary of State for India in Council, practically concede the whole case; for if the disproportion between the rank and pay of officers is a just ground of complaint, it was so before 1st April 1875, quite as much as after that date.

Despatch of  
9 July 1874.

"22. Your Committee, therefore, feel that they have virtually, if not literally, the sanction of the Secretary of State in Council to some recognition of the claims of these officers, and they submit the above proposal to the House in the hope that in it may be found an equitable solution of the question."

MOTION MADE, and Question proposed, That the Draft Report proposed by Lord George Hamilton be now read a second time, paragraph by paragraph—(Lord George Hamilton).—Amendment proposed, to leave out the words "Lord George Hamilton," in order to insert the words "Sir Walter Barttelot," instead thereof—(Sir John Hay).—Question put, That the words "Lord George Hamilton" stand part of the Question.—The Committee divided:

Ayes, 6.  
Mr. Courtney.  
Mr. Carpenter Garnier.  
Mr. Denzil Onslow.  
Lord George Hamilton.  
Mr. Fawcett.  
Mr. A. Mills.

Noes, 8.  
Major O'Beirne.  
Sir Henry Drummond Wolff.  
Sir John Dalrymple Hay.  
Colonel Loyd Lindsay.  
Sir Walter Barttelot.  
Mr. Campbell-Bannerman.  
Mr. William Holms.  
Mr. Muntz.

Words "Sir Walter Barttelot," inserted.—Main Question, as amended, put, and *agreed to*.—DRAFT REPORT proposed by Sir Walter Barttelot, read a second time, paragraph by paragraph.

[Adjourned till Friday next, at One o'clock.

*Friday, 24th May 1878.*

#### MEMBERS PRESENT:

Colonel JERVIS in the Chair.

Mr. Carpenter Garnier.  
Major O'Beirne.  
Mr. Denzil Onslow.  
Sir Henry Drummond Wolff.  
Mr. A. Mills.  
Sir John Dalrymple Hay.  
Colonel Loyd Lindsay.  
Sir Walter Barttelot.

Mr. Campbell-Bannerman.  
Mr. William Holms.  
Mr. Muntz.  
Mr. Courtney.  
Mr. Grant Duff.  
Mr. Fawcett.  
Lord George Hamilton.

Paragraphs 1—3, *agreed to*.

Paragraph 4, amended, and *agreed to*.

Paragraph 5, *agreed to*.

Paragraphs 6—7, amended, and *agreed to*.

Paragraph 8, *agreed to*.

Paragraph 9, amended, and *agreed to*.

Paragraphs 10—12, *agreed to*.

Paragraphs 13—14, amended, and *agreed to*.

Paragraphs 15—17, *agreed to*.

Paragraph 18.—Amendment proposed, in line 4, after the word “That,” to leave out the words “those officers ought,” in order to insert the words “considering the special circumstances connected with the issue of the Royal Warrant, those officers not unnaturally look”—(Mr. *Fawcett*),—instead thereof.

Question put, That the words proposed to be left out stand part of the paragraph.—The Committee divided:

Ayes, 8.  
Major O’Beirne.  
Sir Henry Drummond Wolff.  
Sir John Dalrymple Hay.  
Colonel Loyd Lindsay.  
Sir Walter Barttelot.  
Mr. Campbell-Bannerman.  
Mr. William Holms.  
Mr. Muntz.

Noes, 7.  
Mr. Courtney.  
Mr. Carpenter Garnier.  
Mr. Denzil Onslow.  
Lord George Hamilton.  
Mr. Fawcett.  
Mr. A. Mills.  
Mr. Grant Duff.

Paragraph amended, and *agreed to*.

[Adjourned till Wednesday next, at Two o’clock.

Wednesday, 29th May 1878.

MEMBERS PRESENT:

Colonel JERVIS in the Chair.

Mr. Denzil Onslow.  
Mr. A. Mills.  
Sir George Balfour.  
Sir John Dalrymple Hay.  
Colonel Loyd Lindsay.  
Sir Walter Barttelot.  
Mr. Campbell-Bannerman.  
Lord George Hamilton.

Mr. William Holms.  
Mr. Muntz.  
Mr. Courtney.  
Major O’Beirne.  
Mr. Fawcett.  
Mr. Carpenter Garnier.  
Sir Henry Drummond Wolff.

Paragraph 19.—Amendment proposed, in line 1, to leave out the words “well aware,” in order to insert the words “however deeply impressed with the importance”—(Mr. *Courtney*),—instead thereof.

Question put, That the words “well aware” stand part of the paragraph.—The Committee divided:

Ayes, 9.  
Major O’Beirne.  
Sir John Dalrymple Hay.  
Colonel Loyd Lindsay.  
Sir Walter Barttelot.  
Mr. Campbell-Bannerman.  
Mr. William Holms.  
Mr. Muntz.  
Mr. A. Mills.  
Sir George Balfour.

Noes, 3.  
Mr. Courtney.  
Mr. Denzil Onslow.  
Lord George Hamilton.

Another Amendment proposed in the same line, to leave out the word “peculiar,” in order to insert the word “special”—(Mr. *Denzil Onslow*),—instead thereof.

Question put, That the word “peculiar” stand part of the paragraph.—The Committee divided:

Ayes, 9.  
Major O’Beirne.  
Sir John Dalrymple Hay.  
Colonel Loyd Lindsay.  
Sir Walter Barttelot.  
Mr. Campbell-Bannerman.  
Lord George Hamilton.  
Mr. William Holms.  
Mr. Muntz.  
Sir George Balfour.

Noes, 3.  
Mr. Courtney.  
Mr. Denzil Onslow.  
Mr. A. Mills.

Paragraph

Paragraph agreed to.

Paragraph 20, amended, and agreed to.

Paragraph 21.—Amendment proposed, to leave out from the first word "But" to the end of the paragraph, in order to add the words "your Committee would therefore abstain from making any proposal to the House, and would content themselves with reporting the opinions they have formed, leaving it to the unfettered discretion of the Secretary of State in Council to act in the matter as he may be advised"—(Mr. Courtney),—instead thereof.

Question put, That the words proposed to be left out stand part of the paragraph.—The Committee divided:

Ayes, 9.

Major O'Beirne.  
Sir Henry Drummond Wolff.  
Sir John Dalrymple Hay.  
Colonel Loyd Lindsay.  
Sir Walter Barttelot.  
Mr. Campbell-Bannerman.  
Mr. William Holms.  
Mr. Muntz.  
Sir George Balfour.

Noes, 6.

Mr. Courtney.  
Mr. Carpenter Garnier.  
Mr. Denzil Onslow.  
Lord George Hamilton.  
Mr. Fawcett.  
Mr. A. Mills.

Paragraph agreed to.

Paragraph 22.—Amendment proposed, in line 3, to leave out from the word "and" to the end of the paragraph, in order to add the words "In making this recommendation they must guard themselves against the supposition that they wish to impair the general control hitherto exercised by the Secretary of State for India over the revenues of India, or to establish a precedent by which the issue of a Royal Warrant by the Secretary of State for War must, *ipso facto*, regulate pay and allowances under the control of the Indian Government. Their suggestion is confined to the individual case referred to them for investigation, in the hope that it may prove an equitable solution of an exceptional and complicated controversy"—(Lord George Hamilton),—instead thereof.

Question put, That the words proposed to be left out stand part of the paragraph.—The Committee divided:

Ayes, 9.

Major O'Beirne.  
Sir Henry Drummond Wolff.  
Sir John Dalrymple Hay.  
Colonel Loyd Lindsay.  
Sir Walter Barttelot.  
Mr. Campbell-Bannerman.  
Mr. William Holms.  
Mr. Muntz.  
Sir George Balfour.

Noes, 6.

Mr. Courtney.  
Mr. Carpenter Garnier.  
Mr. Denzil Onslow.  
Lord George Hamilton.  
Mr. Fawcett.  
Mr. A. Mills.

Paragraph agreed to.

Amendment proposed, That the following new paragraph be inserted in the proposed Report:—"The pay and allowances alluded to above form the remuneration received from the Indian Government by British officers who are upon the Indian Establishment, and serving in India. These military allowances are under the control and regulation of the Secretary of State for India in Council, and are much in excess of the amount to which British officers of a similar rank, but stationed in the United Kingdom, are entitled by Royal Warrant and Regulation"—(Lord George Hamilton).

Question proposed, That this paragraph be inserted in the proposed Report.—Amendment proposed, to amend the paragraph, by omitting the word "much"—(Sir Walter Barttelot).—Question put, That the word "much" stand part of the proposed paragraph. The Committee divided:

Ayes, 5.

Mr. Courtney.  
Mr. Carpenter Garnier.  
Mr. Denzil Onslow.  
Lord George Hamilton.  
Mr. Fawcett.

Noes, 9.

Major O'Beirne.  
Sir Henry Drummond Wolff.  
Sir John Dalrymple Hay.  
Colonel Loyd Lindsay.  
Sir Walter Barttelot.  
Mr. Campbell-Bannerman.  
Mr. William Holms.  
Mr. Muntz.  
Sir George Balfour.

Question put, "That the paragraph, as amended, be inserted in the proposed Report.  
—The Committee divided :

Ayes, 10.

Mr. Courtney.  
Mr. Carpenter Garnier.  
Mr. Denzil Onslow.  
Colonel Loyd Lindsay.  
Sir Walter Barttelot.  
Mr. Campbell-Bannerman.  
Lord George Hamilton.  
Mr. William Holms.  
Mr. Fawcett.  
Mr. Muntz.

Noes, 4.

Major O'Beirne.  
Sir Henry Drummond Wolff.  
Sir John Dalrymple Hay.  
Sir George Balfour.

Question, That this Report, as amended, be the Report of the Committee to the House—put, and *agreed to*.

*Ordered*, To Report, together with the Minutes of Evidence, and an Appendix.

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MINUTES OF EVIDENCE.

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LIST OF WITNESSES.

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# MINUTES OF EVIDENCE.

Wednesday, 3rd April 1878.

## MEMBERS PRESENT:

Sir George Balfour.  
Mr. Campbell-Bannerman.  
Sir Walter Barttelot.  
Mr. Fawcett.  
Mr. Carpenter Garnier.  
Lord George Hamilton.  
Sir John Hay.

Mr. William. Holms.  
Colonel Jervis.  
Colonel Loyd Lindsay.  
Mr. Muntz.  
Major O'Beirne.  
Mr. Denzil Onslow.  
Sir Henry Wolff.

COLONEL HENRY JERVIS-WHITE-JERVIS, IN THE CHAIR.

Mr. RALPH THOMPSON, C.B., called in ; and Examined.

*Chairman.*

1. You are Assistant Under Secretary of State at the War Office, I believe?—I am.

2. Will you inform the Committee what is the mode in which the correspondence connected with financial matters in case of the organisation of the service being altered, is carried on between the War Office and the Indian Office?—We correspond officially, just like any other two departments of the Government: the name of the one Secretary of State is used by the Under Secretary of the War Office, and the Military Secretary of the India Office writes on behalf of the Secretary of State for India in Council.

3. Irrespective of, and in addition to, the official correspondence between the Secretary of State for War on the one hand, and the Secretary of State for India in Council on the other hand, a good deal of communication, I suppose, takes place between the two departments, or is everything put on record?—Everything ought to be put on record.

4. Is everything, in fact, put on record?—Yes, so far as I know.

5. Then no communication takes place verbally or otherwise on financial matters between the two offices, except in official correspondence?—I should imagine that there is a good deal of personal communication before a matter is put on record, as there is between other departments of the Government and the War Office.

6. Does that in any way bind either party?—Not until it is put on record; there may be an understanding, but is not a settlement of the question between the two offices until it is put on record.

7. When the officers of the two departments meet in this manner, or when they meet the

*Chairman—continued.*

Secretary of State, I suppose the whole thing is official?—Semi-official.

8. Do you consider that those who are the media of communication inform the parties whom they represent of what has taken place at such interviews?—I should imagine so, as a rule, if they are committing them to anything.

9. And therefore if they do that, they must be to a certain extent aware of what has been going on?—Yes, if they do it, certainly.

10. Do you think it is likely that they would not do it?—I can only answer for what I should do under those circumstances myself; of course, I should report to the Secretary of State for War anything that I had done on his behalf.

11. You stated that the two offices correspond in the same way as any other two offices?—Yes.

12. But, generally speaking, a Secretary of State has full power over his department, has he not?—Yes.

13. And, of course, with consent of the Cabinet, he can take a step, or approve of anything, without consulting anybody else in his office?—Yes; but if it is a financial matter, he has to consult the Treasury.

14. But in the India Office the Secretary of State is bound to consult his Council, is he not?—Yes.

15. Therefore he has not the same freedom of action in such matters as the Secretary of State for War has?—I should think not; he is bound down by the India Government Act of Parliament, I suppose.

*Sir Henry Wolff.*

16. When you say the Treasury, you mean the Government, in fact?—No, the Treasury as a department.

A

17. The

Mr. R.  
Thompson,  
C.B.  
3 April  
1878.



Mr. R.  
Thompson,  
C.B.  
3 April  
1878.

Sir Henry Wolff—continued.

17. The consent of the head of the Treasury is sufficient, I suppose; there is no one who can control the Chancellor of the Exchequer?—No.

Chairman.

18. With reference to any military matters which bear upon questions of finance, what department of the War Office communicates with the India Office?—The Financial Secretary's department.

19. I ask you the question because we have it in evidence that there have been communications between the departments of the Horse Guards and the India Office, which were acknowledged by the India Office, and replied to on some occasions, whilst on others they declined to receive the communication, although it was on the same subject, on account of its being a financial matter?—Is the particular correspondence named?

20. Yes; for instance, on the 23rd June 1875, a letter was addressed by the Military Secretary at the Horse Guards to the Under Secretary of State at the India Office, respecting the matter before us, and that letter was duly acknowledged in the name of the Secretary of State for India in Council, under the date of 3rd August, and a reason was alleged for not entertaining it, but the reason was not considered satisfactory to the Horse Guards; and a further letter was sent on the 18th of November, which was returned; you will find the first letter at page 119 in the Appendix to our Report of last year?—I find on looking at it that it is merely forwarding letters.

21. But it requests a reply!—No, I think it does not request a reply; it merely forwards letters "for the consideration and decision of the Right Honourable the Secretary of State for India in Council."

22. If you will turn to page 121, you will find the letter of the 3rd August which I have referred to?—I see it.

23. That was not considered a satisfactory answer, and a further communication was addressed from the Horse Guards on the 18th of November 1875, which was returned by the India Office, because, as it related to a question bearing upon finance, it ought to have come through the Secretary of State for War?—Yes, I think the first letter from the Military Secretary should have come through the Secretary of State for War, rather than have been addressed direct to the India Office.

24. By rights, all questions of grievance respecting pay which reach the Horse Guards, ought to go straight to the Financial Secretary?—Yes.

25. I think you will find it so laid down in the Queen's Regulations?—Not that he can consider them if they regard Indian pay; he merely forwards them to the India Office.

26. He would have charge of the correspondence?—Yes.

27. The warrant which occasioned this question was duly forwarded to the India Office on the 15th of June 1872; it consisted of four distinct heads, of which what we are concerned with was one; it was replied to by the India Office on the 11th July 1872, accepting three of those heads and declining the fourth; you will find at page 128 of the Appendix, that the India Office acknowledges the receipt of the letter enclosing the warrant, and distinctly lays down, as far as the India Office is concerned, the four different

Chairman—continued.

points arising out of the warrant; one is the promotion of first captains to be majors; another is a uniform rate of pay for all lieutenant colonels; the third is the increase to the establishment of general officers of engineers; and the fourth is the increase of the establishment of captains, with a corresponding reduction in the number of subalterns of Engineers; they approve of three and decline the fourth?—Yes.

28. You would call that having submitted the matter to the Council, would you not?—Yes, I should imagine so; the reply is written in the name of the Secretary of State for India in Council.

29. Now in that reply, as you will see if you look at paragraph 6, the Secretary of State for India in Council requests the War Department to take this opportunity of obtaining Her Majesty's sanction to an increase of general officers of Engineers in India—Yes.

30. Is it necessary for the India Office, with respect to questions of alteration of the organization, to request the concurrence of the Secretary of State for War?—As the alteration affected establishments of British as well as Indian officers, the India Office would be bound to submit it to the Secretary of State for War; it was increasing the establishment of the Royal Army.

31. Then do you consider, holding the official position that you do in the War Office, and having charge of the correspondence there, that upon all questions of that kind the India Office does ask for the concurrence of the War Department?—Where it is a question as to an increase of the establishment, I should say so.

32. Or an alteration of the establishment?—Yes.

33. It appears that when the Indian Staff Corps was established, a communication took place on the 17th of January 1861, requesting the concurrence of the Secretary of State for War for authorising the formation of the Staff Corps?—Yes.

34. Therefore it would appear from that, that even when the question affects a local service, the India Office has been in the habit of requesting the concurrence of the War Department?—Yes, where it is a question of establishment, as otherwise questions of supersession of British officers might arise.

Lord George Hamilton.

35. Establishment of the Indian Army?—Of the Royal Army; the Staff Corps is part of the Royal Army, technically.

Chairman.

36. You mean the officers?—Yes; it is dealt with in the warrant regulating army promotion.

Sir George Balfour.

37. You are aware that the Secretary of State for India signed the Warrant constituting the Staff Corps of India, and not the Secretary of State for War?—Yes.

38. Does that form an exception to the rule you have mentioned?—No, because the Indian Staff Corps does not belong to any cadre of the British Army as in the case of the engineers, but it was done with the concurrence of the War Office, I believe.

39. You are aware, also, are you not, that no change is made in the Indian service with regard to

*Sir George Balfour*—continued.

to brevet rank, or any organic change, without the War Office being consulted?—Yes, that is so.

40. Has not that been the invariable practice from time immemorial?—Yes, I should think so. I cannot speak with certainty, but I believe so.

41. Whilst the Indian Office reserves to itself the power to make additions to the establishments of the army in a certain limited form, no organic change in the organisation or the rank of the Indian Army was ever made without the previous sanction of the War Office, or of the Secretary of State in charge of that department?—I think so. I am not quite certain, but I believe that to be the case.

42. You were in the War Office at the time when the Warrant of 1855 was established, were you not?—Yes.

43. That Warrant was submitted to the Secretary of State for approval, was it not?—Yes.

44. It made a great change in the Indian Army?—Yes.

45. Was that change merely a following up of the Warrant of 1854, which had been established for the Royal Army?—I am afraid I cannot speak positively on that point without looking up the Warrant to see; it is going back some way now.

*Mr. Denzil Onslow.*

46. You say that the Staff Corps is under a Royal Warrant?—Yes.

47. The Secretary of State for War has no control whatever over any officers of that staff corps, has he?—The Staff Corps does not serve in England; as a matter of fact, it is a local corps.

48. No doubt they are local to a certain extent; but I ask whether the Secretary of State for War has any control whatever over any officers in the Staff Corps?—No; because he does not exercise control over any officer of the local army in India.

*Mr. Campbell-Bannerman.*

49. In any communications of a personal nature held between the War Office and the India Office, I understand you to say that it is quite understood by the officials of the War Office that the Indian Council has supreme control of the financial aspects of any question that concerns India?—That is my personal view; but what I rather meant to say was, that we do not consider any conversations of this semi-official character as binding, until they are put into the form of an official correspondence. In the case that you refer to, of course we should have got an official letter, written in the name of the Secretary of State for India in Council, which would have then been a binding letter.

50. When an official of the India Office comes to the War Office to consult as to the effect of

*Mr. Campbell-Bannerman*—continued.

some proposed regulation, it is, of course, assumed that he informs the Secretary of State for India in Council, where necessary, of what is going on?—Yes, that is to say, he informs the proper authorities of his own office.

51. At the same time he carries with him to the War Office no power to bind the India Office in any way?—No, I should say not.

*Lord George Hamilton.*

52. These semi-official communications are found a very convenient way of adjusting differences, are they not?—Yes, they are found a convenient way of arranging a matter instead of thrashing it out in a long official correspondence.

53. Therefore unless an officer of the India Office informed you that he was specially authorised by the Secretary of State in Council to settle the matter, you would not consider any acquiescence or approval which he might give to any suggestion that you might make on the part of the War Office as binding, until they had been sanctioned by the Secretary of State for India in Council?—Certainly not.

54. In the Despatch to which the Chairman has called your attention, dated 11th July 1872, did you notice that the point to which the Secretary of State in Council objects is contained in paragraph 4, and it is to this effect:—"His Grace desires me to say, however, that as the officers now holding the position of first captains in those two corps in India are liberally remunerated for their services in that country, he does not consider that any change in their present rate of Indian pay and allowances is called for by the proposed change of rank and designation;" it was impossible for Lord Cardwell, therefore, to misunderstand the decision at which the Secretary of State in Council had arrived as regards the Indian pay and allowances of those officers?—I should think so. It seems to me to be quite clear.

55. And there was no further correspondence upon the subject?—That I do not quite know; I do not remember any, but I have not looked up the correspondence very much, because I thought my examination was going to be limited entirely to the abstract question of the way in which the correspondence is conducted between the two departments, and that I was not going to be examined as to the particular merits of this question.

56. But as these papers were included in a Parliamentary Return, purporting to give all the correspondence, and as among them there is no further reply from the Secretary of State for War, what conclusion would you draw?—Of course I assume that there was none.

*Mr. R. Thompson,*  
C.B.

3 April  
1878.

*Friday, 5th April 1878.*

MEMBERS PRESENT :

Sir George Balfour.  
Sir Walter Barttelot.  
Mr. Campbell-Bannerman.  
Mr. Courtney.  
Mr. Fawcett.  
Mr Carpenter Garnier.  
Mr. William Holms.

Colonel Jervis.  
Colonel Loyd Lindsay  
Mr. Mills.  
Mr. Muntz.  
Major O'Beirne.  
Mr. Denzil Onslow.  
Sir Henry Wolff.

COLONEL HENRY JERVIS-WHITE-JERVIS, IN THE CHAIR.

His Royal Highness The DUKE OF CAMBRIDGE, K.G. ; Examined.

*Chairman.*

H.R.H.  
Duke of  
Cambridge,  
K.G.  
5 April  
1878.

57. YOUR Royal Highness, the Committee will be much obliged to you if you will kindly inform them what are the present regulations of the service by which officers of the British Army are bound to submit grievances which they may labour under as regards pay, or other grievances, which have to be forwarded to head-quarters?—Do you ask the question with reference to India, or generally?

58. Generally, and with reference to the troops in India?—They can make any statement to the Commander in Chief at home, and in India to the Commander in Chief in India, for transmission either to the financial or military department, as the case may be, according to the grievance.

59. And in case of grievances being unredressed would they then be forwarded by the Commander in Chief in India, through you, to the Secretary of State for War?—No; in my opinion, if it is anything relating to finance, of course the Indian Government must deal with it just exactly as with us; anything in the way of finance would be dealt with by the Secretary of State in the financial department; consequently, any grievances in the way of finance in India that could possibly be settled in India, would be so settled. Therefore an officer would make his grievance known to the Commander in Chief in India, and he would send it forward to the Government of India, and if they could settle it, it would not come further; if they could not settle it, then it would come to the Secretary of State for India in Council; and if the officer wished it to go to the highest authority, which is myself, they would transmit it to me, and I should then be able to give any opinion upon it that I thought necessary. But, of course, questions about financial and Indian matters would have to be dealt with either in India itself, or by the Secretary of State for India in Council.

60. We have had put before us in the Papers which have been submitted to the Committee that the Duke of Argyll, the Secretary of State for India in 1873, and the Marquess of Salisbury, who held the same office in 1874, considered that they should have sent direct through the Commander in Chief in India to you?—My idea

*Chairman—continued.*

is that that is an incorrect view of the case. I think that the other view of the case is the correct one, for the reason I have given, because this is a question of finance. Of course, if it is a question of discipline, there is no doubt that it would come direct from the Commander in Chief in India to myself; but if it is a question of finance, it must be the financial department which must deal with it; and, therefore, I do not see what advantage it would be for it to come to me direct. If it did come to me direct, I should most probably have to send it back to India for the authorities there to give their opinion on the case and say how the matter stands; and therefore I think the other the much simpler and easier way of dealing with it.

61. In the meantime, I suppose the Adjutant General in India would forward these complaints to the Adjutant General in England, so as to keep you acquainted with what is going on at the same time?—I do not think that follows as a matter of course, because if it is a question that can be settled in India it would not come before me at all. When it came to me, if it did come to me at all, I should get it with all the details and all the necessary information which would be necessary by its being sent through the Government of India and the Secretary of State. If it came direct I should only know one side of the case; if it came through the Government of India I should know what they had got to say to it.

62. In that case the India Office would communicate with your Royal Highness upon the matter?—Most assuredly.

63. The witnesses on the part of the India Office have dwelt strongly upon the great difference between Indian and British pay; does your Royal Highness consider it fair to compare Indian pay, which includes Indian allowances, with English pay, irrespective of barracks, fuel, forage, &c., which are given in addition in this country?—I certainly think that the circumstances under which men serve in India differ from those under which they serve at home; and therefore the pay and allowances in India must be on a different scale from those at home.

64. Therefore your Royal Highness does not consider

*Chairman*—continued.

consider it a fair comparison to take Indian pay and allowances on the one hand, and compare them with the British pay on the other?—I do not quite understand the question. The circumstances under which a man serves in India are peculiar, and from those circumstances he has special allowances for fuel and various other allowances; whereas here he is allowed to live in barracks, and so on. Of course, relatively, the condition of an officer in each country is supposed to be sufficient to meet the requirements of his rank; and though the pay may be higher in one country than the other, I do not think that has anything to do with it.

65. Your Royal Highness is aware that in most of the colonies colonial allowances of money are made to officers to cover those things, which they get in addition to their pay?—Certainly; but that has nothing to do with the pay. I contend that the pay and allowances are perfectly distinct things; a man gets his pay as a matter of course, and then the allowances are regulated according to the requirements of the place in which he is serving at the time, whether at home or abroad; it may be that the allowances are higher abroad than at home; they are regulated by the requirements and necessities of the case.

*Colonel Loyd Lindsay.*

66. When all the allowances, in addition to the English pay, are taken into consideration it comes nearer to the Indian pay than it would do, of course, if simply the pay of the English officer were taken without those allowances?—Certainly.

*Chairman.*

67. One reason why I put the question to your Royal Highness is, that a particular reference was made to the fact that English soldiers and officers were supposed to be serving at the Straits Settlement, and Hong Kong, and Ceylon, on English pay; and that pay was compared with the pay in India. From a Return, which has been furnished by the Accountant General at the War Office, it appears that the officers' pay and the colonial allowances in those three settlements and colonies are very little different from the pay received by the officers in India?—Because, of course, as I say, the circumstances under which they are serving, whether Colonial, Indian, or Home, are taken into account, and an officer's pay and allowances are made up to meet any extra expenses that he may be liable to under the various circumstances under which he has to serve.

68. There is a question with reference to the late Indian Artillery, which became the Royal Artillery in 1861; your Royal Highness is aware that certain pledges were made to those officers that, in case of their volunteering, the rights and privileges given to them, and approved by the different Acts which transferred them to the service of the Crown, they were to retain, and that in future they were to be subject to the organisation of the British service; and therefore we have this position of things, that those who, according to the organisation of the British service, would receive certain promotion, were, according to the rights which were pledged to them, entitled to the pay of their rank?—Most assuredly.

69. Does your Royal Highness think that in 0.70.

*Chairman*—continued.

any way that pledge was at all fulfilled when, on their becoming promoted, they were refused the pay of their rank?—That is a question of finance, which the Indian Government deal with as they think fit, but my opinion is that generally the rank carries the pay. As far as I am concerned, I think it objectionable that you should give a man substantive rank without giving him the pay to which that rank entitles him.

70. I do not know whether your Royal Highness remembers (it is a long time ago) that those officers were particularly thanked in your name for the manner in which they had volunteered subsequent to these pledges which were made, not by the War Department, but by the Government?—Yes.

71. In your Royal Highness's opinion, can you have a separate organisation for the army in India different from that for Great Britain and the Colonies, or wherever the troops may be employed, considering that the troops in India have to be relieved from time to time by the troops at home?—Certainly not; there can be only one organisation. I cannot conceive on what ground there should be any difference of organisation in one part of the world and the other. There may be different circumstances, but the organisation must be the same wherever the troops serve, as a matter of course.

*Colonel Loyd Lindsay.*

72. As I have only recently been on the Committee, perhaps you will allow me to ask one question, which may possibly have been asked before; I would ask whether your Royal Highness is of opinion that there has been a prolonged and considerable misunderstanding?—Certainly.

73. Through which, some of the officers of Her Majesty's Army in India have not received the amount of pay which they considered their due?—No, they have not.

74. So far as your Royal Highness is aware, have the officers proceeded in the proper way, and with due regard to discipline in making their grievances known to your Royal Highness?—I believe they have generally, according to what they were told as to the channel through which they were to put forward their statements; but I do not quite think it was correct; I think it is not laid down as I should have laid it down myself, and as I have endeavoured to lay it down before the Committee.

75. But so far as they understood the proper course, they have followed it?—I think so.

76. And according to discipline they did proceed properly?—I have no reason to think that they have proceeded otherwise than in a correct way.

77. I think your Royal Highness recommended to Her Majesty that the rank of major should be conferred on officers in command of batteries?—That was the decision come to in Lord Cardwell's time.

78. And it was so conferred?—It was carried out.

79. And I will ask your Royal Highness whether you ever knew a case in which substantive rank was given which did not also carry with it increased pay?—That is the general rule.

80. The present Lord Cardwell, I think, was Secretary of State for War at the time when these arrangements were made?—Yes.

81. And

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Colonel *Lloyd Lindsay*—continued.

81. And he agreed with your Royal Highness in recommending Her Majesty to confer this rank of field officers upon majors?—It was Lord Cardwell's proposal.

82. I would ask your Royal Highness, did Lord Cardwell believe that he obtained the entire approval of the Secretary of State for India in Council to the proposal which you then submitted to Her Majesty?—I suppose he did; but of course that was an arrangement so completely between the Secretary of State for India and the Secretary of State for War, that I really do not know; but my apprehension, certainly, was at that time that it was arranged between them. But the Committee probably might know more about that than I, because Mr. Campbell-Bannerman was at that time Financial Secretary at the War Office.

83. At all events, Lord Cardwell believed that he had obtained that approval?—I have no doubt that Lord Cardwell was under the conviction that it was all arranged between him and the Duke of Argyll.

84. Then I would ask your Royal Highness this; I suppose previous to the Warrant, which, of course, it was necessary should be issued, being issued, the convenient course would have been for your Royal Highness to have verbal communications with officers representing the Secretary of State for India in Council; that would be the probable convenient course, and the one which usually would be followed in other cases?—That is what takes place; but it is merely, as I have always understood it, to prevent a great deal of unnecessary official writing, that whoever represents the India Office militarily (I believe he is called the Military Secretary), whenever anything of this sort has occurred, has come over to the War Office to consult with the financial or military authorities there, and make arrangements to prevent any unnecessary correspondence; and then the result has been put, as I have always been led to believe, in some minute or official form, and, I believe, acknowledged by the other department; and in that way it becomes an official document, and an official decision. But I certainly have always understood myself that when any employé of the India Office came in that way to the War Office to consult with the War Office, more or less he was a go-between to try to make the arrangements necessary between the two departments. Of course I am perfectly aware that no Indian official of that description has any power to come to a decision, naturally he goes to the Secretary of State and Council; but the business of our department is to deal with whoever comes from the India Office to make these arrangements.

85. Does your Royal Highness believe, with Lord Cardwell, that arrangements were made, and made with the Indian Council, with regard to this additional rank?—I certainly was under that impression.

86. Sir Thomas Pears, Sir, was at that time Secretary to the Military Department of India, I think?—Yes.

87. In any official communications and interviews which Sir Thomas Pears might have with your Royal Highness, would you consider that he was acting in his official capacity, or would you consider that he was acting in his private capacity?—He would act semi-officially; he would, I apprehend, give the views which he im-

Colonel *Lloyd Lindsay*—continued.

agined to exist in the department by which he was employed, and he would then, having heard the views which the Secretary of State for War, or myself, had on any particular subject, to go back to his department, and thus he would know how to deal with the question under consideration in his own department. How he dealt with this question in his own department I do not know; but I certainly have always understood that, when anything of this sort was arranged between the two departments, if an officer of that description came and gave his views, and listened to ours, it was, to a certain extent, semi-official. I knew he had not the power of decision, certainly.

88. Probably his proper course on an important matter of that sort, after having heard your views and those of the Secretary of State for War, would be to communicate those views to persons in the India Office, or to the Secretary of State in Council, whom he represented?—Certainly.

89. And then Sir Thomas Pears would understand precisely what was the proper channel, and what was the proper system, so to communicate better than anybody else, better than even your Royal Highness?—Assuredly; I have not the least idea how those arrangements are made in the India Office; it was entirely left then to the India Office to deal with; we can only deal with the question as regards ourselves.

90. In fact, your Royal Highness, the only means which you have of communicating with the Secretary of State in Council is through the Military Secretary personally?—Personally, certainly, unless when it becomes a matter of official communication, then the official communication comes through the India Office to the Secretary of State for War; and if it is necessary it is passed on to myself, representing the military element, and then goes back in the form of a letter to the Secretary of State for India in Council.

Mr. *Campbell-Bannerman*.

91. There is also your Royal Highness's Assistant Military Secretary?—Yes, there are certain every-day military occurrences which pass direct between the Military Secretary of the India Office and the Military Secretary of the Horse Guards.

Colonel *Lloyd Lindsay*.

92. He would only be one additional link in the chain?—Yes, I was referring to subjects which I meant had to go to the Secretary of State in Council; ordinary details of business would naturally pass between the Military Secretary at the India Office and my Military Secretary; but then those are not large questions of principle such as we are alluding to at the present moment.

93. After these full personal communications the warrant was eventually submitted to the Council of India?—Yes.

Mr. *Mills*.

94. I understood your Royal Highness to say that in those cases in which matters of military finance were not settled in India, then, as a matter of form, they came before the Secretary of State for India in Council, and then were referred to your Royal Highness?—Yes; but not as a matter of form, but for ultimate decision after

*Mr. Mills—continued.*

after reference to myself, if such reference has been asked for.

95. But that in the event of their being settled in India, they would not come before your Royal Highness at all?—They would not come before me at all; it would be, I think, a great mistake if officers were to refer home to me, unless it were on points which could not be decided in India.

*Sir Henry Wolff.*

96. May I ask your Royal Highness this question; the Financial Secretary of the War Office has just asked you whether the mode of proceeding of these officers was in accordance with discipline. If it were not in accordance with discipline that would be no reason why they should be punished by forfeiture of their just rights, would it?—I think not.

97. Is your Royal Highness aware of any case in which the pay of officers has been arbitrarily reduced in India by the India Office without any consultation with the authorities in England?—No, I do not know of any.

98. If there were such a case, to whom would the officers of India look for protection?—Questions of finance must be settled, of course, by the Secretary of State and Council of India; but if an officer had a complaint to make, he could make it in the way I suggested just now.

99. Your Royal Highness was responsible, I believe, for either recommending or for agreeing to the promotion of these captains to the rank of major?—I was a party to it. Lord Cardwell proposed the scheme, and of course I was a party to it before it was submitted for final approval.

100. Was your Royal Highness at the time aware of the contracts that existed in India by which officers in command of batteries of artillery had some certain beneficial interests?—They had the contract allowances.

101. Your Royal Highness was aware of that?—I was aware of that.

102. At the time that these captains were promoted to the rank of major was it stated to your Royal Highness that in consequence of their enjoying these contracts they were to be debarred from any additional pay in India, such as was enjoyed by other majors?—I understood that the reason why they were not to get the higher rate of pay, was that this contract was supposed to put them in so much better a position that the higher rate of pay was not required; that was what I understood was the reason given. But this is a financial question. I do not know that officially, beyond the fact that it came to my knowledge; because it was a financial question which was arranged between the Secretary of State for War and his department financially with the Secretary of State for India in Council and his department. Therefore, as far as I was concerned, I had nothing to do with it.

*Chairman.*

103. I think your Royal Highness in your position would rather have no questions put to you bearing at all upon financial matters which belong to another department?—Yes. I have no responsibility whatever in the matter, because it was entirely carried on between the financial department of the War Office and the India Office, and I had nothing to do with it.

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*Sir Henry Wolff.*

104. I only wanted to ask your Royal Highness whether you were aware of those contract allowances at the time that this was alleged?—I am only aware of it from having heard since that there have been these complaints, and having been told, at the time, that the intention was to make this distinction. That was a financial question which I had nothing to do with.

105. Before the warrant was issued?—I suppose it must have been before the warrant was issued. I am not responsible in any way for the procedure of the financial department; therefore, so far as it goes, my evidence is not material, because I had nothing to do with it in my official capacity.

106. Will your Royal Highness allow me to explain myself; your Royal Highness said that you considered the words "rank and position" involved the pay and allowances of that position?—I do as a matter of fact; that is my impression, and that is the impression of the army, or anybody conversant with military matters. A rank would naturally carry with it pay and allowances, and, therefore, unless something is stipulated to the contrary, I say, as a matter of fact, I contend that substantive rank carries with it that which substantive rank means, pay and allowances.

107. And your Royal Highness's opinion would be, that they should receive those pay and allowances, unless you were told that there were certain circumstances that altered the case?—Yes; but, as I understood, there were circumstances that made it reasonable, to make this difference, and therefore it was so decided. But as far as the fact goes, substantive rank carries with it pay and allowances.

*Sir George Balfour.*

108. Although the question of finance does not enter into your official duties, Sir, the question of discipline is entirely under your Royal Highness, is it not?—Entirely.

109. Whenever changes take place in diminution of the pay and allowances of officers, these changes, unless carefully guarded, are calculated to affect discipline?—Yes.

110. Your Royal Highness would never approve of changes in the pay and allowances being made without distinct warning being given to the parties concerned?—No. I myself should think that every instance of specialité ought to be made known to the parties concerned.

111. And where these changes are liable to affect discipline, your Royal Highness would expect that any great change should be communicated to you clearly and distinctly?—Certainly.

112. The practice has always been to give to the substantive rank of the officers going to India from England, the pay and regimental allowances of that particular rank as fixed in India?—Always.

113. Your Royal Highness sent out, in 1857, a very large force of artillery, and along with them there were regimental colonels of artillery special for the home service, but exceptional then to the Indian service?—Yes.

114. These officers, as a matter of course, did not receive the pay of lieutenant colonel, which was the only rank doing regimental duty in India, but received the pay and allowances of the superior rank of colonel which they held?—Yes.

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Sir George Balfour—continued.

115. There was no question then of reducing these officers to the pay and allowances of a subordinate rank?—No, I never heard that there was.

116. Therefore, taking that custom as a good precedent to follow, it followed as a matter of course that the majors of artillery newly promoted under Imperial consideration, ought to have received the pay and allowances of the rank to which they were promoted, and as fixed in India?—Certainly, there was no question about it.

117. Your Royal Highness would deprecate extremely any interference with the pay and allowances of officers and men in India, after the knowledge which your Royal Highness has of the regrettable circumstances which have taken place in consequence of meddling with pay?—Certainly.

118. Your Royal Highness is aware that many men have been put to death, and that dissatisfaction of officers has taken place, all arising from tampering with their pay and allowances?—I think it is most objectionable.

119. And considering the consequences that would follow from tampering with them, in your view it is desirable to surround any changes with the greatest possible formalities?—Yes.

120. Your Royal Highness has been in communication with the India Office on subjects connected with the establishment and ranks of officers and men forming the troops in India?—Yes.

121. You officially communicated, in 1861 in particular, direct with the India Office with regard to important changes which were then proposed from the India Office?—Yes.

122. Your Royal Highness refused to assent to all the changes proposed?—Yes.

123. You would expect that when any great changes are made you yourself should have the power of expressing your opinion publicly upon them?—Yes, as a rule, that would be so, no doubt.

124. In this case, if the question had come to you in that formal and special manner, your Royal Highness would have had an opportunity of expressing your opinion that the substantive rank of these officers entitled them to the pay and allowances usually given to that rank in India?—As a matter of ordinary duty, I should say that the pay and allowances always went with the rank. Whether there were or were not special circumstances in the case I have nothing to do with, because it was arranged financially between the two Secretaries of State; but, as I have explained, I was not responsible for that; that was entirely done by the financial branches of the two departments.

125. I am anxious to keep your Royal Highness clear of the financial part of it; but if your Royal Highness had been consulted, would you have thought it your duty to have looked carefully into the question what these contract allowances were which were made a set-off against the regimental pay and allowances?—Yes.

126. And then you could have expressed an opinion whether it was advisable to retain the contract allowances, and to deny the officer the pay and allowances of the substantive rank, or to abolish the contract allowances, and allow the officer to retain his full pay and allowances?—The contract allowances were so completely an Indian question, that we thought the Indian authorities were the proper parties to deal with

Sir George Balfour—continued.

that part of the case, and no doubt that had great weight with me in my not offering any opposition at the time to what was supposed to be just and fair.

127. The point I wanted to obtain your Royal Highness's opinion on, was the fact that in all these changes, involving such serious matters, and these matters where discipline might be affected, it would have been advisable for the Commander in Chief to have had the case put before him?—He would then have given his opinion in an official manner, of course.

128. When officers like the Military Secretary from the India Office have communications with your Royal Highness, it does not belong to them to decide afterwards that the communications which they have had were private or merely personal?—No.

129. It is not the custom of the Army to allow subordinates to address the Commander in Chief in a manner which will justify them in saying afterwards that the communications were personal?—No, I do not consider that those communications were personal so far as I have already explained. I am aware that officers in their special position cannot of themselves arrive at decisions, and therefore they come to me, not in order to deal decisively with anything that may have passed between them and me, but at the same time I consider that if they come and deal on any question officially with either myself or the Military Secretary, they are, to use a common phrase, the go-between, and that they carry our views or my views to the India Office, just as I assume they bring the India Office views to me; and therefore, to that extent, I consider that the communications are semi-official at all events; they are not decisive; but I think that communications passing in that way are decidedly semi-official communications.

130. They approach your Royal Highness in an official capacity, not in a private capacity?—Certainly in an official capacity.

131. To that extent we have to look upon communications in that way as more or less bearing upon the subject on which questions have been addressed to your Royal Highness?—That is the way in which I have always understood that the communications that have passed between us should be looked at by me.

Mr. Carpenter Garnier.

132. I should like to ask your Royal Highness with regard to the position of Sir Thomas Pears in carrying on such communications; do you think he rightly defined his position in answer to Question 783, which I will venture to read: "I may state that I was on many occasions careful to warn the Secretary of State for War and the officers in high positions who surrounded him, that in speaking to me and listening to my opinion, they could not be said to be receiving any opinion on the part of the Secretary of State for India in Council; the constitution of the India Office is such, that it is utterly impossible for a man holding the position that I did, to go beyond that, and say, until the question has been placed before and deliberated upon by the Council, what they would think or what they would do"?—That bears out what I say. He says that he cannot be responsible for what the Secretary of State for India in Council will do. I have admitted that, but still I contend that any officer coming

*Mr. Carpenter Garnier—continued.*

coming in that position to negotiate or to conduct arrangements with another department is to that extent a semi-official, and carries back the views that he hears from the other departments, and he is assumed, as far as he knows, to express the views that he may have heard, or thinks likely to be acceptable to his own superiors. I guarded myself by saying that I knew he had no decisive voice upon the matter. The Military Secretary of the India Office has no deliberative voice in the matter; he is a mere executive officer, acting under the orders of the Secretary of State for India in Council, but still I assume that he knows sufficient of the feeling there, and what is going on; that he is able to give an opinion as to what is wished by those whom he represents.

133. And with reference to the substantive rank carrying corresponding pay and allowances, I do not know whether your Royal Highness is aware that Sir Thomas Pears did give us an instance in which substantive rank did not carry corresponding pay and allowances, at Question 796, "Were there such regulations?—(A.) There were, as regard the junior lieutenant colonels and the junior lieutenants of the Artillery and Engineers. (Q.) Up to what year?—(A.) The junior lieutenant colonels received the pay of majors up to 1872"?—That is quite correct. In the old Indian Service they had majors; in the Royal Service they had none; that was the old organisation, and when the two services were brought together this was felt to be so objectionable as regards the Indian officers that all the majors were at once made lieutenant colonels, but a proportion of them only received majors' pay.

*Mr. Denzil Onslow.*

134. I presume that this promotion which was given to the captains was not given in a hurry; that there was a good deal of consideration of it?—It was very much discussed.

135. And was the question ever brought before you regarding the great increase there would be in the finances of India if this promotion was given to officers in India?—It was a financial question which, of course, I conceived would be settled and arranged between the Secretary of State for India and the Secretary of State for War, and therefore as far as that point went it was not my special vocation to deal with it.

136. I do not ask your Royal Highness whether it was your duty to deal with it, but in the communications, semi-official or otherwise, with Lord Cardwell, was the financial bearing of this question ever brought to your notice *quoad* India?—Of course the fact of the superior rank must make it more expensive. Really a financial question is involved in the whole question, and therefore if it were thought necessary and desirable to make the charge for home purposes on the Imperial expenditure, it was also known that it would involve an additional expenditure for India as a matter of course. I hope I have expressed myself clearly. I think incidentally I might say that though I quite admit (I have said it over and over again) that I have nothing to do with their financial bearing, still when these questions are discussed no doubt it must be the case that the financial points do arise; but we did not deal militarily with the financial question; that is for the Secretary of State to deal with, with whatever

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*Mr. Denzil Onslow—continued.*

other department he may have to arrange with for any change of that description.

137. I wished to know whether, as a fact, the financial bearings of the case were ever brought to your notice?—Not more than I say; but it could not help coming to our notice, because the very fact of its being promotion involved an additional expense, as far as India was concerned. It was so for home purposes, and therefore it would be so for India; it was not as if it were a proposal made to reduce something else, and to substitute this. There was nothing reduced in substitution. It was an additional expense, and therefore, if it was an additional expense for home purposes, it naturally would involve an additional expense for India.

*Mr. William Holms.*

138. Your Royal Highness has said that rank carries with it the pay of rank. I wish to ask your Royal Highness this question; is your Royal Highness aware of any case in which an officer has received substantive rank of a higher grade than that which he previously held, in which the pay of that higher rank has not accompanied it?—Yes, I am; I said not before, but I have been corrected. There are those cases that were alluded to just now in the artillery; the substantive majors of artillery in the old Indian service were made substantive lieutenant colonels in order to bring the rank up to the Royal artillery where they had no majors, and they got the substantive rank without getting additional pay; it was the same with the subalterns, and to a certain extent it was so, at one time, in the Royal Artillery, though it is not so now; the junior lieutenant colonels having been originally majors, got only majors pay.

139. In that case to which you refer, was intimation given to the officers receiving the higher grade of rank that the pay would not accompany that promotion?—I assume that that announcement was made to them in India as a matter of course. I cannot answer for that, but I assume it.

*Mr. Campbell-Bannerman.*

140. As you say, Sir, your particular department has nothing to do with the financial aspect of the question?—Nothing whatever, excepting just as was stated by Mr. Onslow, that incidentally in the discussion of such a question, finance would crop up, would appear; and to that extent of course I am aware of it; but I had no dealing with it; it is not for me to deal with it as regards either the Secretary of State for War or the Secretary of State for India.

141. Your Royal Highness will remember many conversations held at the War Office with Sir Thomas Pears, at which your Royal Highness was present, and other officials of the War Office?—Yes, perfectly.

142. And, I presume that it was generally understood then by all concerned, that Sir Thomas Pears had no authority to bind the Secretary of State for India in Council, but that he was there to represent, so far as he knew it, the Indian view of the case, and to hear the view which was held by the officials at the War Office?—That is exactly what I understood, and what I have been trying to explain.

143. Not only had he no power to bind the Secretary of State for India, but also, probably, the various officials of the War Office were aware of

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of the peculiar power of the Indian Council in this matter?—I think they were perfectly aware of it; and I always understood that he came there just to hear what was said by the Financial Department at the War Office, and then to carry it to the India Office.

144. You may remember, Sir, that the draft warrant for this purpose, as a matter of fact, was altered to suit the convenience of the India Office as represented by Sir Thomas Pears?—Yes.

145. That the pay was given partly as substantive pay and partly as a command allowance, as it was understood to meet their ideas?—That was what I understood was the case when the warrant was passed.

146. And thereupon the warrant was issued?—Yes.

147. And when the warrant was issued all responsibility on the part of the War Office in the matter, of course, cease?—Certainly.

148. I will read an answer of Lord Cardwell's to see whether your Royal Highness agrees in its general tone. He says, in answer to Question 84, "I have always endeavoured to keep particularly clear the difference between rank, on the one side, and pay and allowances on the other. With regard to the pay and allowances, I did not interfere in any degree whatever with the Indian pay and allowances; but I understood that if we altered the form of the warrant so as to represent 16*s.* by the two sums of 14*s.* 6*d.* and 1*s.* 6*d.*, the hands of the India Office would be more free, and they could deal with their finances more conveniently?"—Certainly.

149. But as to the arrangements which they made there between the pay on the one hand and the allowances on the other, that was a matter entirely to be dealt with by the Secretary of State for India in Council?—That was what I understood at the time, exactly as Lord Cardwell put it.

150. And that, as your Royal Highness has said, is a thing always understood in those negotiations which take place between the two offices?—Certainly.

151. At the same time, it is of course understood also that the negotiator, whoever he may be, whether Sir Thomas Pears or anyone else, does communicate what passes to his superiors, and does obtain their assent?—Most assuredly.

Sir Walter Barttelot.

152. I will ask your Royal Highness just one question. Was brevet rank ever mentioned to you in the course of the discussion upon giving extra rank to the officers of the artillery and the engineers?—As a general question do you mean?

153. As a general arrangement?—Yes, the difference between brevet rank and substantive rank was discussed.

154. And it was decided afterwards that substantive rank, from the position which these officers held and the command which they had, ought to be given them, and not brevet rank?—Yes.

155. And your idea was that substantive rank would necessarily carry the pay of that rank?—

Sir Walter Barttelot—continued.

I thought that substantive rank would carry the pay. I know that there was a discussion whether the garrison battery officers ought to be put on the same footing as the other majors regarding allowances, because it was thought that their duties were different.

156. You are aware, Sir, that Lord Salisbury when he went to the India Office immediately made a compromise with regard to this matter?—Yes.

157. Giving the pay, and making certain other arrangements with regard to the allowances?—Yes.

158. Has that arrangement worked satisfactorily so far as you know?—I have never heard any complaint on the subject, but I cannot tell positively.

159. All that you do know is that an arrangement has been made and was carried out in the year 1874-75?—Yes.

Chairman.

160. Your Royal Highness has replied to a question of the honourable Member for South Devon, in which he asked you with reference to the pay of certain lieutenant colonels in India who were on major's pay; I do not know whether your Royal Highness will remember that it was in consequence of one-fourth of the artillery colonels, and one-fifth of the engineer colonels having been promoted by General Order through the Master General on the distinct understanding that no pay was to be attached, and that in consequence, when the India Army was amalgamated, and an increased number of officers given in India, they were placed on an equivalent footing, not as a question of money, but in order to put them in the same position as the British officers then serving in India?—Yes; they got the rank to place them on an equality with the British list of officers.

161. I put that question to your Royal Highness that in case there is any mistake in your reply to the honourable Member for South Devon, you may correct it on reference to the official communications?—Yes.

Sir George Balfour.

162. The pay of the junior lieutenant colonels was the pay properly drawn when in England?—Yes.

163. But the allowances entirely belonged to the rank of lieutenant colonel?—Yes.

164. Would your Royal Highness endeavour to see that minute financial difference?—Yes.

165. The same as regards the lieutenants, that the pay proper of England is what they received, plus the pay and allowances of the substantive rank which they held?—Yes.

Mr. Carpenter Garnier.

166. I merely asked your Royal Highness just now as a question of fact, with reference to its being the case, that up to 1872 the junior lieutenant colonels received the pay of majors; I did not in my question go into the reasons?—Just so.

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# A P P E N D I X.

## Appendix, No. 1.

### PAPER put in by the *Chairman*.

(Confidential.)

(No. 2633.)

Appendix, No. 1.

LETTER from Colonel *C. G. Arbuthnot* to the Commander in Chief,  
Bombay Presidency.

Deputy Adjutant General's Office, Royal Artillery, Head Quarters,  
Calcutta, 2 June 1874.

Sir,

I HAVE the honour, by desire of the Right Honourable the Commander in Chief in India, to state that his Lordship observes, with regret, that letters frequently appear in the public Press relative to the pay of Majors of Artillery.

That most, if not all, of these letters are written by officers of the Royal Artillery, is probable.

These officers must be aware that there is a proper channel for all legitimate complaints, and that by appealing to the Press, instead of availing themselves of that channel, they are acting in defiance of regulations, setting a bad example to those under them, and bringing discredit on the corps to which they have the honour to belong.

Lord Napier of Magdala feels sure that the officers of the Royal Artillery, as a body, have too high a sense of discipline to countenance these anonymous productions, and trusts that those who have permitted themselves to appeal to the Press will not repeat an act which is in no way calculated to forward their views, and which it is hoped they will see, on reflection, unbecoming their position in Her Majesty's Service.

I am desired to request that your Excellency will be pleased to make known his Lordship's opinion to the officers of the Royal Artillery under your Excellency's command.

I have, &c.

(signed) *C. G. Arbuthnot*, Colonel,  
D. A. G. R. A. in India.

To His Excellency the Commander in Chief,  
Bombay Presidency.

### GENERAL ORDER.

THE Commander in Chief directs the publication of the annexed General Order by the Governor General in Council, notifying the formation of the late Indian Artillery into brigades of Royal Artillery.

\* "The Commander in Chief in India experiences great satisfaction in obeying the orders of His Royal Highness the General Commanding in Chief, to convey to Brigadier Swinley and the officers of the late Bengal Artillery, the expression of the heartfelt gratification which His Royal Highness has derived from the high military feelings which prompted them to come forward, almost in a body, and declare their readiness to serve Our Most Gracious Sovereign the Queen everywhere.

"The Duke of Cambridge feels the conviction that the spirit of devotion and gallantry which has gained renown for the Bengal Artillery in so many Indian fields of honour, will distinguish them as Royal Artillery, wherever their duty may call them.

"The new Royal Artillery will conform henceforward to the rules and regulations of Her Majesty's British Service."

[G. O. C. C., 28 October 1861.]

## Appendix, No. 2.

PAPER put in by the *Chairman*.

## Appendix, No. 2. STATEMENT of INDIAN PAY and CONTRACT ALLOWANCES for OFFICERS of HER MAJESTY'S TROOPS, in force in INDIA on the 5th July 1872.

## EXPLANATION of REFERENCES.

*Kerr*.—Code of Pay and Audit Regulations, &c. &c., as issued to the Army under the Bengal Presidency. Compiled by permission of Government under the superintendence of the Military Auditor General, by R. Kerr, Register and Principal Accountant to the Department. Calcutta, 1845.

*Jameson*.—Code of Military Regulations at present in force under the Presidency of Bombay. Compiled under the authority of Government by Captain G. I. Jameson (now Major General), Deputy Military Auditor General. 1st February 1844. Bombay.

*Ditto*. Bombay, 1850.

*Cochrane*.—Regulations applicable to the European Officer in India. Published by authority, by George E. Cochrane, late Assistant Military Secretary, India Office. Second Edition, 1867.

G. O.—Government Order.

G. O. G. G.—General Order by the Governor General.

D. C. D.—Despatch Court of Directors.

B. M. B. L.—Bengal Military Board Letter.

G. O. C. C.—General Order Commander in Chief in India.

Prendergast : Law relating to India, p. 10.

In the Charter of 1698, which enabled the East India Company to raise troops to defend their territories, the Crown reserved "the sovereign right, power, and dominion, " over all the said forts, places, and plantations, to us, our heirs and successors."

21 Geo. 3, c. 65, s. 32, made it incumbent on the East India Company to obtain the license of his Majesty to raise recruits or to obtain a recruit dépôt in his Majesty's dominions in Europe, and the Court of Directors was to deliver to the Commissioners of the Treasury, or to the High Treasurer for the time being, or to one of his Majesty's principal Secretaries of State, copies of any letters or orders relating to the management of the revenues, or the civil and military affairs of the Company.

28 Geo. 3, c. 8. Preamble.

24 Geo. 3, c. 25, created the Board of Control, which was "invested with the " superintendence and control over all the British territorial possessions in the East Indies " and over the affairs of the United Company of Merchants trading thereto," and " authorised and empowered, from time to time, to superintend, direct, and control all " acts, operations, and concerns which in anywise related to the civil or military govern- " ment or revenues of the said possessions." And the Court of Directors' was " required " by the said Act to pay due obedience to, and to be governed and bound by, such orders " and directions as the said Court shall from time to time receive from the said Board, " touching the civil or military governments and revenues of the said possessions."

The Board of Control was further empowered " at any time to direct that the expense " of raising, transporting, and maintaining such forces as might be judged necessary for " the security of the British territories and possessions in the East Indies should be " defrayed out of their revenues, unless such troops were sent at the express requisition " of the East India Company."

4 Geo. 4, c. 71, s. 1.

Doubts having arisen respecting the power of the Board, it was re-affirmed by 28 Geo. 3, c. 8; the number of Royal troops being fixed at 8,045, the Company's European forces at 12,200. By 31 Geo. 3, c. 10, the Royal troops were raised to 10,727 men, and the powers of the Board of Control were made more distinct by 33 Geo. 3, c. 52, and 53 Geo. 3, c. 155, by which latter Act (s. 87) the Royal troops were raised to 20,000 men. All the charges and expenses of raising and maintaining the forts and garrison there, and providing warlike and naval stores, were made a first charge on the revenue of India.

33 Geo. 3, c. 52, s. 12.  
3 & 4 Will. 4, c. 85,  
s. 30.  
Note 1, p. 33.

Consequently no orders relating to the civil and military government could be sent to India by the Court of Directors until approved of by the Board; copies of the proposed orders, &c., were to be sent to the Board, and to be returned with approval certified, or if disapproved, or varied in substance, with reasons in writing; despatches as approved to be forwarded unless, on representation of the Court, the Board ordered any alteration, and the Court was bound by instructions received from time to time from the Board.

Prior

Prior to the year 1757, the military establishment of the East India Company consisted of only a few companies of artillery and European infantry, with natives armed after the manner of the country, for the protection of the several factories. Appendix, No. 2.

In January 1757, on the retaking of Calcutta and re-establishment of the Government, a battalion of Sepoys was ordered to be raised and officered from the Madras detachment. In the course of that year some other battalions were formed and officered in like manner.

The establishment of a battalion of infantry was then : one captain, one lieutenant, and one ensign ; all other officers were natives.

These two or more battalions did duty together ; they took post according to the date of their captains' commissions, but as that created some confusion in the field, or on parade, by the frequent changing of corps from one part of the line to the other, the Governor and Council, in April 1764, ordered the battalions to be numbered according to the then rank of their captains.

In 1773, a few field officers were appointed ; but up to that time officers, whatever their rank might be, were usually sent out to India in the rank they were to hold. A regular covenant was drawn up between the Company and each officer, the latter agreeing to serve in India in a certain rank for certain pay, and submitting to certain rules. The favouritism which the Company showed to some of those officers attracted the notice of the House of Commons, and a Committee which sat in 1773 reported that the Directors had ordered that all promotions should go in all ranks throughout the whole service by seniority. And "That the duty and service of an artillery officer was in its nature so distinct and different from that of all the other branches of the military profession, that the officers could not be removed without evident prejudice to the corps itself ; that therefore it ought to be put upon such a footing that the prospect of preferment (though confined to them alone) should give the commanding officer a chance, according to his pretensions, of keeping pace with those who rose in the other corps in the service."

In the year 1780, each regiment of Sepoys consisted of two battalions, each of 1,000 men. A major commanded the regiment, a captain each battalion, a lieutenant each company, and there were no ensigns.

In 1786, the two battalions of each regiment were doubled up into a single battalion of 10 companies, thus giving one major and two captains to the battalion, besides subalterns.\*

As in India, service in the field was attended with peculiar charges to the officers, the Company had, at an early period of their wars, found it necessary to allow their officers, during the time of campaign, a certain addition to their daily pay, which, in the language of the country, was styled "batta," or indemnity for field expense,† but the East India Company was often in financial difficulties,‡ and the question of batta gave rise, from time to time, to serious differences between the Company and its officers. Early in 1766 it caused a serious mutiny amongst the Bengal officers.§ † Note 2, p. 33.

In 1785 the resources of the Company were so completely exhausted as to be hardly equal to the payment of the arrears which were due to the army ; the troops were so exasperated by the length of these arrears as to be ripe for mutiny, and the Board of Control sent orders to apply the Company's money to the satisfaction of the troops, postponing payments of every other description.||

In consequence of the representation of a committee of officers of the East India Company, which met in London in 1787, his Majesty was pleased to confer on all the Company's officers his Majesty's local commission, so as to place them on an equal footing with the king's officers in India,¶ and in 1793 they petitioned the King as "bearing commissions in your Majesty's army in India. They complained that as the commanding officer ¶ Note 3, p. 34.

\* Royal Commission, "Indian Officers' Memorials," 1864. App. (B.)

† Batta.—The extra allowance of pay given to officers serving in the field in India, and of pay, or provisions, given to the non-commissioned officers and privates.—*Major Dirom*, D. A. G. to the King's Forces; *Campaign in India*, 1792; *Glossary*, p. 297; London, 1798.

§ "James' Military History, British India." Book 4, ch. 7.

Unlike the items of horse, tent, boat, or command allowances, the term "batta" conveys no meaning to the ear of a military man unacquainted with the allowances drawn by officers in India ; and the mere definition of the word, "an additional or extra allowance," does not afford any information as to the express purposes for which it was originally granted. It is understood in the present day that "full batta" is granted for the express purpose of covering the expenses incident to frequent change of quarters, and "to compensate for the withdrawal of field allowances or double full batta ; and officers in receipt of the allowance have no claim to be indemnified either for the erection or loss of houses on the occupation" or abandonment of full batta stations, officers in receipt of full batta being considered to be in the field.—*Court of Directors*, 26 February 1833, No. 17; *Jephson's Regulations, Bengal Army* (138); *Cochrane*, p. 328.

|| "History of British India," by James Mill, Book vi, c. 1. Vol. 5, p. 77. Statement of Mr. Dundas, President of the Board of Control.

## Appendix, No. 2

officer of a battalion was only a captain, they were often superseded by captains of company's in the King's service. They had no general officers, and an inadequate proportion of field officers and captains. An almost similar petition was sent to the Court of Directors, and a statement accompanied, both in which they entered fully into their grievances as regards pay, furlough, promotion, &c., and delegates were appointed to wait on the President of the Board of Control, and the Court of Directors.\*

The statement they made as to pay gives a fair insight into the manner in which the king's officers were paid.

"His Majesty's officers draw every allowance of pay, batta, &c., which is made to the Company's officers under the same Presidency with them, and take their tour at the field station in roster with the Company's European battalions.

\* \* \* \* \*

"The captains of his Majesty's army draw each 56 l. 10 s. per annum, for non-effectives. Those in the Company's have no allowance of this kind.

† Note 4, p. 34.

"The captains in his Majesty's army, while in India, draw 7 s. per day subsistence,† and 3 s. 6 d. is paid them in Europe, called arrears, making, in all, 15 l. 15 s. per month. The Company's captains draw 120 Sonat rupees, equal to Sicca rupees 114. 9. 1, which, at the exchange the king's officers receive their pay, viz., 2 s. 5 d. per Sicca rupee, is 13 l. 15 s. 6 d., making a difference of 2 l. 0 s. 6 d. per month in favour of his Majesty's captains, and the inferior ranks in proportion.

"The East India Company profess to pay their troops at the same rate as his Majesty's are paid; a captain therefore ought to receive 10 s. per day, but he in reality receives 4 Sonat rupees, equal to 2 s. 2 d. each, making 8 s. 8 d. His Majesty's officers lose a smaller proportion, in consequence of receiving their king's pay and arrears in sterling money. The Governor General, members of council, and judges, prudently receive their salaries in English money, or an amount equivalent to it.

\* \* \* \* \*

"If to the above be added the various contingencies of Peon money, occasional allowances for sitting courts-martial, together with those made for horses, candles, stationery, &c., which are enjoyed equally by the staff of his Majesty's and the Company's troops, under the Madras Presidency, and which are unknown to the army in Bengal, the aggregate expense incurred by the Company will be found to fall little, if at all, short of the sum received by a part of the troops in Bengal, under the denomination of double batta, with this convenience, on the side of the latter, that, being a regular allowance to be drawn only within certain limits, its amount is fixed; nor are the officers of Government subjected to lose their time in the investigation of vexatious and irregular demands, as must necessarily be the case when there are numerous contingencies."

The Marquis of Cornwallis, who was from the outset consulted by the President of the Board of Control, thus expressed his views on the subject of pay, 4th November 1794:—

"The articles of pay to the corresponding ranks, and of gratuity to captains and subalterns, and of additional pay to subalterns, are nearly the same at all the Presidencies; the same rules, however, are not observed on the three establishments, in dividing the savings of the off-reckoning fund, and the allowance which is made to colonels and field officers, under the head of commission upon the revenues, is unequal at the different Presidencies; but the situation of the officers and soldiers of all descriptions of the three establishments with regard to the article of batta, is particularly different.

"At Bombay, a very small proportion of the troops receive any batta whatever. The troops stationed in what is denominated the centre division, under the Presidency of Fort St. George, receive no batta, but all the others belonging to that establishment draw half batta; and neither the troops of these Presidencies, nor the King's troops that happen to be stationed at either of them, are allowed more than full batta, either on actual service in the field or in any other situation.

"At Bengal, none of the troops draw less than half batta, a considerable number of the native troops are always on full batta, the large division of European troops, and of European officers of native battalions which is allotted for the protection of the Vizier's dominions, is allowed double full batta, and the same allowance has hitherto been given to all the troops of the Bengal establishment that have been employed on any service beyond the bounds of the Company's provinces, belonging to the Government.

"As the necessaries of life are much dearer and the wages of servants higher on the Coast

\* "Petition to his Majesty."—Parliamentary Papers, Vol. 40, 1794-95.  
Original Papers elucidatory of the claims preferred by the officers of the Honourable Company's army in India, pp. 65-67.

“Coast of Coromandel and Malabar, than in Bengal, there appears to be no other mode of accounting for the inequality of allowances to officers and soldiers of the same descriptions, and serving the same masters, under similar circumstances, than from the different state of the finances of the three Presidencies; but it has, as it might naturally be expected, been a subject of dissatisfaction and mortification to those who have been the least favoured in time of peace; and I can speak from experience that when troops belonging to the different Presidencies with a body of King's troops were assembled in the same army, to carry on the operations of war, it produced jealousies and discontents of a very serious nature.”

Appendix, No. 2.

The Court of Directors avoided recognising the official position of the delegates, but they were received by the President of the Board of Control, who was also Secretary at War, at the Horse Guards, and from him they received every assistance.

The petitions to the King and Court of Directors were laid on the Table of the House of Commons early in 1795, and, on 16th June 1795, the President of the Board of Control stated to the House of Commons, that the changes the Government considered necessary for the improvement of the army of the East India Company would be carried out by the Court of Directors; whence the Code of Regulations known as the Code of 1796, and which has regulated Indian pay ever since.

The army of the East India Company was organised and officered on the same principle as the Royal army; both services were placed on an equal footing as to Indian pay, which was based entirely on substantive rank, all brevet allowances ceasing.\*

The following Table shows the pay, as then fixed, for the officers of the East India Company for Bengal, the value of the rupee being then taken in Bengal at 2*s.* 6*d.*, and in Madras at 2*s.* 3½*d.* In Bombay the pay was reckoned by the pagoda, valued at 8*s.*

Indian pay then consisted of net pay, batta, gratuity to captains and subalterns.

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\* Proceedings of the Representative Committee, elected by the officers of the establishments of Bengal, Madras, and Bombay, for the purpose of obtaining a redress of the grievances peculiar to the Military Service of the East India Company, 1794. App. I.: “Parliamentary History,” Vol. 32, p. 88. Journal of the House of Commons, 9 and 10 March 1795. “Life of Sir John Malcolm,” by J. W. Kaye, Vol. 1, c. 3. “Parliamentary Papers, 1794–95,” Vol. 40. Parliamentary Committee, 1813, on Affairs of East India Company; Evidence of Sir John Malcolm.



## BENGAL.—PAY and ALLOWANCES for

Original Papers elucidatory to the Claims preferred by

		IN GARRISON, OR CANTONMENTS.								
		Pay.	Gratuity.	Additional Pay.*	Established Allowance.	Half Batta.	TOTAL.			
EUROPEAN INFANTRY :		Sonat Rs.	Sonat Rs.	Sonat Rs.	Sonat Rs.	Sonat Rs.	Sonat Rs.			
General Officer on the Staff -	-	300	-	-	† 4,400	-	4,700	1		
Colonel, not a General Officer on Staff -	-	300	-	-	-	‡ 750	1,050	2		
Lieutenant Colonel -	-	240	-	-	-	300	540	3		
Major -	-	180	-	-	-	225	405	4		
Captain -	-	120	36	-	-	90	246	5		
Captain Lieutenant -	-	60	36	-	-	90	186	6		
Lieutenant -	-	60	24	30	-	60	174	7		
Ensign -	-	48	12	30	-	45	135	8		
Adjutant -	} Non-effective -	-	-	-	137	-	137	9		
Quartermaster -		-	-	-	117	-	117	10		
Surgeon, as Captain -		-	-	-	-	-	246	11		
Assistant Surgeon, as Lieutenant -		-	-	-	-	-	174	12		
EUROPEAN ARTILLERY :										
Colonel Commandant, if not General Officer on Staff -	}	300	-	-	† 1,000	‡ 750	2,050	13		
Colonel of a Battalion -		300	-	-	-	‡ 750	1,050	14		
Lieutenant Colonel -		240	-	-	-	300	540	15		
Major -		180	-	-	-	225	405	16		
Captain -	-	† 140	36	-	-	90	266	17		
Captain Lieutenant -	-	† 70	36	-	-	90	196	18		
Lieutenant -	-	† 70	24	30	-	60	184	19		
Lieutenant Fireworker -	-	† 60	12	30	-	45	147	20		
Adjutant -	}	-	-	-	-	-	-	-		
Quartermaster -		-	-	-	-	-	-	-		
Surgeon -		-	-	-	-	-	-	-		
Assistant Surgeon -	-	-	-	-	-	-	-	21		
ENGINEERS :										
Colonel, Chief Engineer -	-	300	-	-	† 1,866‡	‡ 750	2,916‡	22		
Lieutenant Colonel -	-	240	-	-	§	300	540	23		
Major -	-	180	-	-	-	225	405	24		
Captain -	-	120	36	-	-	90	246	25		
Captain Lieutenant -	-	60	36	-	-	90	186	26		
Lieutenant -	-	60	24	30	-	60	174	27		
Ensign -	-	48	12	30	-	45	135	28		
		Pay.	Gratuity.	Additional Pay.	Established Allowance.	Tent Allowance.	Horse Allowance.	Half Batta.	TOTAL.	
NATIVE CAVALRY :		Rs. a. p.	Rs.	Rs.	Rs.	Rs.	Rs.	Rs.	Rs. a. p.	
Colonel Commandant †	-	397 8 -	-	-	600	} To be settled by the Governor General in Council -	‡ 750	-	-	29
Lieutenant Colonel †	-	278 4 -	-	-	-		300	-	-	20
Major -	-	232 13 4	-	-	-		225	-	-	31
Captain -	-	179 6 4	36	-	-		90	90	485 6 4	32
Captain Lieutenant -	-	109 8 -	36	-	-		90	90	415 8 -	33
Lieutenant -	-	109 8 -	24	30	-	50	60	333 8 -	34	
Cornet -	-	97 5 4	12	30	-	50	60	294 5 4	35	
Adjutant -	} Non-effective -	-	-	-	-	-	-	-	-	-
Quartermaster -		-	-	-	-	-	-	-	-	-
Assistant Surgeon -	-	60 - -	24	30	-	50	60	60	384 - -	37
NATIVE INFANTRY :										
Colonel, not a General Officer, on Staff -	-	300 - -	-	-	-	180	-	‡ 750	1,230 - -	38
Lieutenant Colonel -	-	240 - -	-	-	-	150	-	300	690 - -	39
Major -	-	180 - -	-	-	-	120	-	225	525 - -	40
Captain -	-	120 - -	36	-	-	75	-	90	321 - -	41
Captain Lieutenant -	-	60 - -	36	-	-	75	-	90	261 - -	42
Lieutenant -	-	60 - -	24	30	-	50	-	60	224 - -	43
Ensign -	-	48 - -	12	30	-	50	-	45	185 - -	44
Adjutant -	-	-	-	-	102	-	-	-	102 - -	45
Surgeon, as Captain -	-	-	-	-	-	-	-	-	321 - -	46
Assistant Surgeon, as Lieutenant -	-	-	-	-	-	-	-	-	224 - -	47

\* The additional pay is to continue to the subaltern officers of the present establishment left unpromoted, but to be discontinued in all future appointments.

† The same for any month.

‡ Colonels are allowed full batta in any station.

§ In lieu of commission on public works, and all contingencies.

|| The senior officer, if not a colonel, to be allowed 4,000 rupees per annum.

## THIRTY DAYS, with the proposed ALTERATIONS.

the Officers of the Honourable Company's Army in India.

IN THE FIELD.								In the Vizier's Dominions.	
	Pay.	Gratuity.	Additional Pay.*	Established Allowance.	Full Batta.	TOTAL.		Extra Allowance.	Total.
	Sonat Rs.	Sonat Rs.	Sonat Rs.	Sonat Rs.	Sonat Rs.	Sonat Rs.			
1	300	-	-	† 5,000	-	5,300			
2	300	-	-	-	750	1,050			
3	240	-	-	-	600	840			
4	180	-	-	-	450	630			
5	120	36	-	-	180	336			
6	60	36	-	-	180	276			
7	60	24	30	-	120	234			
8	48	12	30	-	90	180			
9	-	-	-	167	-	167			
10	-	-	-	157	-	157			
11	-	-	-	-	-	336			
12	-	-	-	-	-	234			
13	300	-	-	† 1,000	750	2,050			
14	300	-	-	-	750	1,050			
15	240	-	-	-	600	840			
16	180	-	-	-	450	630			
17	140	36	-	-	180	356			
18	70	36	-	-	180	286			
19	70	24	30	-	120	244			
20	60	12	30	-	90	192			
21	-	-	-	-	-	-			
22	300	-	-	1,866½	750	2,916½			
23	240	-	-	-	600	840			
24	180	-	-	-	450	630			
25	120	36	-	-	180	336			
26	60	36	-	-	180	276			
27	60	24	30	-	120	234			
28	48	12	30	-	90	180			
	Pay.	Gratuity.	Additional Pay.*	Established Allowance.	Tent Allowance.	Horse Allowance.	Full Batta.	TOTAL.	
	Rs. a. p.	Rs.	Rs.	Rs.	Rs.	Rs.	Rs.	Rs. a. p.	
29	397 8 -	-	-	-	To be settled by the Governor General in Council		750	-	
30	278 4 -	-	-	-			600	-	
31	232 13 4	-	-	-			450	-	
32	179 6 4	36	-	-			180	575 6 4	
33	109 8 -	36	-	-	90	90	180	505 8 -	
34	109 8 -	24	30	-	50	60	120	393 8 -	
35	97 5 4	12	30	-	50	60	90	339 5 4	
36	-	-	-	-	-	-	-	-	
37	60 - -	24	30	-	50	60	120	344 - -	
38	300 - -	-	-	-	180	-	750	1,230 - -	
39	240 - -	-	-	-	150	-	600	990 - -	
40	180 - -	-	-	-	120	-	450	750 - -	
41	120 - -	36	-	-	75	-	180	411 - -	
42	60 - -	36	-	-	75	-	180	351 - -	
43	60 - -	24	30	-	50	-	120	284 - -	
44	48 - -	12	30	-	50	-	90	230 - -	
45	-	-	-	102	-	-	-	102 - -	
46	-	-	-	-	-	-	-	411 - -	
47	-	-	-	-	-	-	-	284 - -	

To be settled by the Governor General in Council.—*Vide* paragraph of General Letter.To be settled by the Governor General in Council.—*Vide* paragraph of General Letter.

The foregoing table shows the personal allowances to each rank; the extra allowances drawn for iron, steel, &c., for the native battalions and artillery; for writers and stationery to the European infantry, and medicine allowances for the whole army, are to be settled by the Government.

The allowance of sonat rupees, 8,000 per annum, to the senior colonel on the establishment, to be abolished.

The difference between the officers of European and Native infantry at Bengal arises from the tent allowance drawn by the latter.

## Appendix, No. 2.

The rates of batta were, however, not finally settled till 1796, when they were fixed as follows, the alteration was trivial :—

	Full.	Half.
	<i>Rs. a. p.</i>	<i>Rs. a. p.</i>
Colonels - - - - per month	760 15 -	—
Lieutenant Colonels - - - - „	608 12 -	304 6 -
Majors - - - - - „	456 9 -	228 4 6
Captains - - - - - „	182 10 -	91 5 -
Lieutenants - - - - - „	121 12 -	60 14 -
Cornets and Ensigns - - - - „	91 5 -	45 10 6

\* Cochrane, p. 328. No officer to be allowed higher batta than that of his regimental rank.—*Despatch, Court of Directors*, 6 June 1798 (6).\*

† Ibid, p. 334. Full batta was given in compensation at certain stations in lieu of quarters, half batta being confined to stations where they received house rent or quarters.† The amount of house rent was for—

	<i>Rs.</i>
Lieutenant Colonels - - - - -	120 per month.
Majors - - - - -	120 „
Captains - - - - -	90 „
Subalterns - - - - -	60 „

## GRATUITY.

Gratuity was a donation made to regimental captains and subalterns in addition to their pay and allowances. Its grant to the army (by a Minute of Council, 5th August 1779) was thus announced :—

“The Court of Directors have thought proper to make the following allowances over and above the present established pay, by way of donation or gratuity, only to captains and subalterns of the army—

	<i>Rs.</i>
To a captain - - - - -	36 per month.
To a lieutenant - - - - -	24 „
To an ensign, &c. - - - - -	12 „

These allowances are drawn as part of the pay and Indian allowance.

The necessities of the Indian service had given rise also to an allowance called

## TENTAGE.

In 1803, officers of European corps stationed above Allahabad were for the first time permitted to draw full tent allowance.† Tent allowance had hitherto been withheld from officers of European corps, on the ground that they were comparatively seldom required to change their quarters. It was subsequently made general to commissioned officers of both European and Native corps, “in order that they may be prepared at all times to move at the shortest notice.”—*Despatch, Court of Directors*, 5th June 1839, No. 37 (4).

Officers for this allowance are bound to provide themselves with and maintain tentage according to their rank ; a point which is perhaps more clearly exemplified by the following order :—

“Officers of British regiments, on first arrival in this country, will be allowed one year to provide themselves with tents, and in the event of their being required to march within that period, tents will be provided for them from the public stores.

“When

† This was an allowance originally confined to field, staff, and European “commissioned officers of the “Sepoy brigades,” in order that “they may be prepared at all times to move at the shortest notice,” and “in consideration of which they are to provide their own camp equipage and carriage.”—*Minute of Council*, 12 December 1786 ; *Henley's Code*, p. 124 ; *Cochrane*, pp. 327-343 ; see Note 5, p. 35.

"When tents are issued under the foregoing rule, a monthly rate, as per margin, will be charged for them, and the repairs or renewals found necessary to the tents when returned into stores will also be charged to the officers who have used them.  
 "The tents will be obtained by indents, 'passed,' with the words, 'for payment of the authorised rent monthly.' The Ordnance Examiner will take measures for the realisation of the rents."—  
 [Bombay, G. O., 10th February 1866, No. 95.\*]

## Appendix, No. 2.

For a field officer's tent	-	-	-	Rs. 36
" captain's tent	-	-	-	30
" subaltern's tents	-	-	-	27
" hill tent	-	-	-	14
" European soldier's tent, S. P.	-	-	-	17
" staff serjeant's tent	-	-	-	10
" native soldier's tent, S. P.	-	-	-	4
" necessary tent	-	-	-	1

° Cochrane,  
pp. 343-5.

In equalising the pay of the two services important elements had to be considered. There was but one scale of net pay for each rank in the Company's service, whilst in the Royal service, under various warrants, there was from time to time considerable difference, such as captains with brevet rank, lieutenants under or above seven years' service, adjutants, paymasters and others, whose pay increased also by length of service. The pay of the Indian officer was a monthly payment, the same for any month; the pay of the British officer was a daily payment.

The differences which arose in consequence were settled by means of the "Batta Allowance," i. e., that when the King's pay exceeded the Company's net pay corresponding deduction was made from the "Batta," and calculated according to whether the months consisted of 28, 29, 30, or 31 days. Besides, as the Company was responsible for the expense of British troops from the date of their leaving England till their return, and Indian pay was only issued in India, due regard had to be paid to the rates of pay laid down in the Royal Warrants, when on the voyage, or on exceptional occasions, when only net British pay had to be issued.†

In 1832 a Committee of the House of Commons, appointed to inquire into the affairs of the East India Company, and which went fully into every detail as regards pay in India, reported that, "The pay and allowances of his Majesty's forces in India are the same with the corresponding ranks in the Company's army. The pay of the officers is somewhat higher, but in such instances a deduction is made from the Indian allowances, so as to keep the two services on a footing of equality in the corresponding ranks."

As regards batta, tentage, house-rent, &c., it was unanimously stated by the witnesses that they were not more than sufficient.

In 1834, Lord Hill, as Commander in Chief, pointed out: "There cannot be any doubt, and in every discussion upon this point it has been fully admitted, that the King's troops employed in India are an auxiliary force; but it is equally true that it is the duty of the officer entrusted with the command of the King's forces to take care that, whatever arrangement may be made for the advancement and advantage of the Company's officers, the fair claims of the officers of the King's army are equally considered, in a just participation of all matters regarding *military rank, pay, and allowances*, whether in garrison or in the field."‡

The lapse of time between 1796 and 1834 had caused certain changes in the value of the rupee in the respective Presidencies, and in that year the Governor General, Lord William Bentinck, drew the attention of the Court of Directors to the fact that, whilst the soldier's English pay was converted into rupees in Bengal and Bombay at 2 s. 6 d., and in Madras at 2 s. 3½ d., it was in reality worth only about 2 s. He further pointed out that whilst the European troops in Bengal were fed by the commissariat at a cost of Rs. 6. 10. per mensem, with a deduction only of Rs. 3. 8. 9½., the soldier fed himself in Madras and Bombay from his pay without any additional allowance, and the wives and children also received extra allowances, and he recommended that the pay should be equalised in the three Presidencies; but the matter was eluded by the Board of Directors until pressed upon them by Lord Howick, when Secretary at War in 1839; and in the following year the non-commissioned officers and men were placed on the Bengal footing throughout India, and the value of the rupee fixed at 2 s. 0½ d., the rations for the men being those fixed for the British troops in Jamaica, and the pay as fixed by the Royal Warrant of 20th March 1837, and with the acknowledgment that "the application to Her Majesty's forces of the above arrangements regarding the pay and rations of the troops has received the sanction of Her Majesty's Secretary at War."

LETTER from the Right Honourable Sir John Hobhouse, Bart., to the General  
Commander in Chief.

My Lord,

India Board, 17 March 1840.

WHEN the subject of the mode of paying the non-commissioned officers and soldiers of Her Majesty's army serving in the East Indies was last under discussion between your Lordship

† Copy of a letter written by General Lord Hill to the President of the Board of Control, dated the 25th day of March 1834, with reference to the relative position of the Royal Officers and those of the late Honourable East India Company.—Parliamentary Paper, 1869.

Appendix, No. 2. Lordship and this Board, we had the satisfaction to receive your Lordship's opinion in a letter from Lord Fitzroy Somerset to Mr. Gordon, dated 25th April 1835, that the method pursued from the year 1797, by the East India Company in paying those troops, was in conformity with the Royal Warrants. In effecting the important and desirable object of regulating the pay of the whole of the armies in India upon a uniform plan, the Court of Directors of the East India Company have determined to proceed so as to obviate all dispute and risk of discontent, and in a spirit of liberality towards the soldier, which I am persuaded that your Lordship will appreciate. They have resolved that the uniform scale to be adopted shall be the highest standard for the issue of pay and provisions to the European troops that is in use in India, namely, that of the Bengal Government, which exceeds the scale prescribed in any of the Bengal warrants; and that scale will accordingly in future be applied to those troops belonging to the armies of Madras and Bombay.

I have the honour to enclose, for your Lordship's information, copy of a Despatch to the Government of India, which has been prepared by the Court of Directors, for the accomplishment of the above important object, and which has received the approval of the Commissioners for the Affairs of India.

I have, &c.  
(signed) *John Hobhouse.*

LETTER from Lord *Hill* to the Right Honourable Sir *John Hobhouse*, Bart.

Sir,

Horse Guards, 31 March 1840.

I HAVE the honour to acknowledge the receipt of your letter of the 17th instant, transmitting for my information copy of a Despatch which has been prepared by the Court of Directors, and received the approval of the Commissioners for the Affairs of India, from which it appears, that to obviate all dispute and risk of discontent, and in a spirit of liberality towards the soldier in India, it has been resolved that the uniform scale to be adopted shall be the highest standard for the issue of pay and provisions to the European troops which is in use in India, viz., that of the Bengal Government, which exceeds the scale prescribed in any of the Royal Warrants, and that this scale will accordingly, in future, be applied to those troops belonging to the armies of Madras and Bombay; and it further appears, that the intended arrangements have received the sanction of the Secretary at War; it only remains, therefore, for me to express my confident expectation that a system of pay established for such judicious purposes, and stated to be so substantially beneficial to Her Majesty's troops employed in India, and approved by such competent authority, will be duly attended with all the advantages for which it has liberally been devised.\*

I have, &c.  
(signed) *Hill.*

\* Troops in India: Parliamentary Return, 1841, No. 97.

The scrupulous care and attention paid by the Court of Directors to all Royal Warrants either affecting or improving the pay or position of the British soldier in India, whether forwarded by the Secretary at War through the Board of Control, or, as was frequently the case, direct to the Court of Directors, is most fully exemplified in the various codes of pay and regulations, published with the sanction of the Government of India for the use of the authorities.†

† See Kerr, Calcutta, 1845, sec. 31. Jameson, Bombay, 1844, sec. 45. Ditto, 1850. Ditto, 1852—1857. ‡ Jameson, Edition 1844, sec. 45, p. 231.

At the same time, the Indian allowances of the officers were re-calculated on the rates of pay laid down in the same warrant; the sum total, however, remaining the same.‡

§ Note 7, p. 37.

In 1845, in order to simplify the duties of the Pay and Audit Department, it was agreed that the pay of Her Majesty's troops, as well as the East India Company's service, should be calculated as a monthly payment.§ Here again the same careful attention was paid to the rates of English pay as laid down in the Royal Warrant; and further, it was laid down that Indian pay, *per se*, consisted only of the British pay, batta, and gratuity; extra batta, house-rent, tent, and horse allowance being drawn separately.

In 1858 the powers of the East India Company ceased, and the authority over its troops was transferred to the Secretary of State for India, and the entire control over the revenues of India to the Secretary of State for India in Council; but the rights and privileges of the late East India Company's officers were by Act of Parliament reserved to them.|| These rights and privileges were fully inquired into by a Royal Commission ¶ in 1858-9, and that Commission reported that amongst these was their right to the following scale of pay and allowances:—

|| 21 & 22 Vict. c. 106.

¶ Report of Royal Commission on the Organisation of the Army of the East India Company, 7 March 1859.

**CONDITION as respects of REGIMENTAL PAY and ALLOWANCES of the Officers of all Branches of the Service in INDIA.**

**TABLE of PAY and ALLOWANCES for any Month.**

CORPS AND RANK.	In Garrison or Cantonment, within 200 Miles of direct Distance from the Seat of Government of each Presidency.					In the Field, and in Garrison or Cantonment beyond 200 Miles of direct Distance from the Seat of Government of each Presidency.				
	Pay and Indian Allowance.	Regl. House Rent.	Horse Allowance.	Tent.	TOTAL.	Pay and Indian Allowance.	Extra Batta.	Horse Allowance.	Tent- age.	TOTAL.
<b>HORSE ARTILLERY and CAVALRY:</b>	<i>Rs. a. p.</i>	<i>Rs.</i>	<i>Rs. a. p.</i>	<i>Rs.</i>	<i>Rs. a. p.</i>	<i>Rs. a. p.</i>	<i>Rs. a. p.</i>	<i>Rs. a. p.</i>	<i>Rs.</i>	<i>Rs. a. p.</i>
Colonel - - - -	1,158 7 -	-	120 - -	200	1,478 7 -	1,158 7 -	-	120 - -	200	1,478 7 -
Lieutenant Colonel - - - -	582 10 -	100	120 - -	150	952 10 -	582 10 -	304 6 -	120 - -	150	1,157 - -
Major - - - -	461 1 10	80	120 - -	120	781 1 10	461 1 10	228 4 6	120 - -	120	929 6 4
Captain or Surgeon, or Veterinary Surgeon, 20 years' service	306 11 4	50	90 - -	75	521 11 4	306 11 4	91 5 -	90 - -	75	563 - 4
Lieutenant or Assistant Surgeon, or Veterinary Surgeon, 10 years' service	194 6 -	30	60 - -	50	334 6 -	194 6 -	60 14 -	60 - -	50	365 4 -
Cornet, or Veterinary Surgeon, under 10 years' service	154 15 10	25	60 - -	50	289 15 10	154 15 10	45 10 6	60 - -	50	310 10 4
<b>FOOT ARTILLERY and ENGINEERS:</b>										
Colonel - - - -	1,065 5 -	-	30 - -	200	1,295 5 -	1,065 5 -	-	30 - -	200	1,295 5 -
Lieutenant Colonel - - - -	547 14 -	100	30 - -	150	827 14 -	547 14 -	304 6 -	30 - -	150	1,032 4 -
Major - - - -	410 14 6	80	30 - -	120	640 14 6	410 14 6	228 4 6	30 - -	120	789 3 -
Captain, or Surgeon - - - -	267 5 -	50	- - -	75	392 5 -	267 5 -	91 5 -	- - -	75	433 10 -
Lieutenant, or Assistant Surgeon - - - -	154 14 -	-	- - -	50	234 14 -	154 14 -	60 14 -	- - -	50	265 19 -
Second Lieutenant - - - -	117 10 6	25	- - -	50	192 10 6	117 10 6	45 10 6	- - -	50	213 5 -
<b>EUROPEAN and NATIVE INFANTRY:</b>										
Colonel - - - -	1,065 5 -	-	30 - -	200	1,295 5 -	1,065 5 -	-	30 - -	200	1,295 5 -
Lieutenant Colonel - - - -	547 14 -	100	30 - -	150	827 14 -	547 14 -	304 6 -	30 - -	150	1,032 4 -
Major - - - -	410 14 6	80	30 - -	120	640 14 6	410 14 6	228 4 6	30 - -	120	789 3 -
Captain, or Surgeon - - - -	249 1 -	50	- - -	75	374 1 -	249 1 -	91 5 -	- - -	75	415 6 -
Lieutenant, or Assistant Surgeon - - - -	145 12 -	30	- - -	50	225 12 -	145 12 -	60 14 -	- - -	50	256 10 -
Ensign - - - -	107 1 11	25	- - -	50	182 1 11	107 1 11	45 10 6	- - -	50	202 12 5

East India House, 23 August 1858.

That same year a question arose respecting the pay of the Artillery in India, which elucidates in a remarkable manner the control which the military authorities in England maintained over the actions of the Court of Directors, as regards the troops of the East India Company, as well as the British troops, and how carefully Indian pay was regulated by British pay.

On 1st April 1858, a letter was addressed by the then Governor General of India, Lord Canning, to the Court of Directors, calling attention to the supercession of the Indian Artillery and Engineers by the Royal Artillery and Royal Engineers, who had been sent to India on account of the mutiny. Since the beginning of the present century the British Ordnance Corps had not been stationed in India, and their organisation differed in many respects from that of the East India Company. The latter, as regards field artillery and garrison batteries, were still based on the infantry battalion system. There was a major to each battalion, and the companies officered by first captain, one lieutenant, and one second lieutenant. The Royal Artillery were organised into brigades for administrative purposes, but the battery was the unit, with five officers, two captains, and three lieutenants; the junior captain being termed second captain.

Parliamentary Return: Correspondence relating to the Artillery Forces in India, p. 48.

The rank of major had been abolished in the Ordnance Corps in 1827, and that of second lieutenant in 1855.

## Appendix, No. 2.

\* Parliamentary Return, Royal Artillery Forces in India, 1869, p. 59.

+ Lord Ellenborough to Deputy Chairman of the Board of Control, then Lord Ellenborough. This was acknowledged by the Court of Directors. They requested the sanction of the War Department to promote their majors to lieutenant colonelcies; that 144 lieutenants of Artillery, and 66 lieutenants of Engineers be made second captains, and to do away with the rank of second lieutenant.†

Chairman and Deputy Chairman of East India Company to Lord Ellenborough, President of the Board of Control, 26 May 1858, p. 50.

The Government of India had come to the conclusion that the Royal Artillery and the Royal Engineers would, for the future, form a component part of the troops in India; and that, consequently, it was incumbent to place the Indian corps on a footing of equality, in accordance with the long standing custom in India.\*

† Ditto, p. 52.

These proposals were approved of by the Board of Control on 27th May 1858, and submitted to the War Office on 8th June 1858.‡

§ Ditto, p. 54.

On the 19th of June the Court of Directors was informed that the Secretary for War and the Commander in Chief considered it was undesirable to deal with this question apart from the general one of the reorganisation of the whole Indian army.§

|| Ditto, p. 58.

On 22nd June 1858, the Court of Directors again urged on the Board of Control the importance of getting the sanction of the War Department to their proposals; and on the 8th July the Court of Directors was informed that General Peel had withdrawn his objection.||

¶ Ditto, p. 56.

On the same date the Court of Directors authorised the Governor General of India in Council to carry out the changes proposed.¶

\*\*Ditto, pp. 119-130.

When the British Ordnance Corps landed in India, every care was taken by the Government of India that their interests, as regards pay, should be fully protected, from the senior officer to the gunner.\*\*

††Ditto, p. 133.

When the consent of the War Department was given to assimilate the reorganisation of the East India Company's Artillery to that of the Royal Artillery, the Court of Directors concluded the officers would as a body, receive the Indian pay as laid down by the regulations of their respective ranks, and consequently, when the Governor General in Council was directed to carry the alteration into effect, no special instructions were sent out as to pay. But subsequently their attention was called by the Government of India to the fact, that certain of the junior lieutenant colonels, and lieutenants in the Royal Artillery and Engineers, received in England only the pay of majors and second lieutenants.†† When the ranks of majors and second lieutenants had been abolished in England, the following order had been issued:—

Communication from the Master General to the officers of the Royal Artillery, 6 Nov. 1827.

“The Master General has the honour of announcing to the officers of the Royal Artillery, that his Majesty, anxious to give proof of his sense of their long, faithful, and gallant services, has been graciously pleased to direct that the following arrangement shall be immediately carried into effect:—

“First. The regimental rank of major is abolished, and the number of lieutenant colonels is augmented in proportion of one to each battalion on major's pay. They are to be posted accordingly, and if necessary, transferred to other battalions when they arrive at the increased pay.”

Extract from General Order, Deputy Adjutant General's Office, Woolwich, 3 April 1855.

“The Lieutenant General of the Ordnance has received Her Majesty's pleasure for discontinuing the rank of second lieutenant in the Royal Regiment of Artillery, therefore all gentlemen cadets hereafter receiving commissions will be gazetted as lieutenants; but this is not to carry with it any increase of pay; two-thirds of the lieutenants on the establishment of the battalions will receive the pay of first lieutenants, and the remainder the present pay of second lieutenants, until they rise in consequence of casualties to within the first division, which will be notified from time to time in General Orders.”

Artillery in India, 1859: Parliamentary Papers, p. 135. Ditto, p. 155.

On this being brought to the notice of the Court of Directors, they directed that “The same distinction as regards pay and allowance must be observed in India, and in the same proportions in the Indian Artillery and Engineers, and in Her Majesty's Artillery and Engineers, viz., one-fourth in the Artillery, one-fifth in the Engineers.”

Extract from General Order, dated 21 July 1804.

But another point arose. In 1804, the rank of captain lieutenant, which then existed in the Royal Artillery, was abolished, and they were appointed captains, with the pay of their rank, but as a regimental distinction, to be termed second captain.

“His Majesty has been also graciously pleased to order that the rank of captain lieutenant in the Royal Artillery shall cease, and that the officers holding commissions of captain lieutenant shall receive commissions as captains, with the usual pay of ten shillings; but that as a necessary regimental distinction from captains of companies, they shall be termed second captains in the Artillery.”

When

When the second captains were created in the Indian Artillery, they were similarly placed on captain's allowances, but since 1804, first captain's pay having been increased to 12 s. 2 d., and second captain's to 11 s. 1 d., in both the Royal and in the Indian Artillery a deduction of 1 s. a-day was made between the Indian pay of a first and second captain, being the difference of the British pay. The correctness of the views of the Court of Directors on these points was recognised by the Secretary of State for India in Council in 1859.

"Of the lieutenant colonels and lieutenants of Royal Artillery and Engineers serving in India, those who in England would be restricted to major's and second lieutenant's pay, shall, in India, receive the pay and allowances of major and second lieutenants respectively.

"Second captains in the Royal or Indian Horse Artillery or Engineers shall receive the pay and allowances of captains; but in the Foot Artillery shall receive 13 d. per per diem less. This exceptional rate for the second captains of Foot Artillery is shown in the margin.

"The sum held to be included as military pay in any consolidated civil salaries of second captains of Foot Artillery is, *Co.'s Rs. 123. 13. 8.* per month, or 13 d. per diem less than in the case of a captain."—

[G. O., 21 January 1859, No. 94. \*]

"This was applied to the Indian Artillery, but the same rule is in force as regards the Royal Artillery in India."\*

In 1860 the European local army was abolished, the whole Native Indian Army was reorganised, but the only alteration as to pay arose out of the formation of the Staff Corps. In consequence of the Indian Mutiny, there were a number of cadres of officers without men. In 1861 the Government offered such officers as had special qualifications, either from staff service, or knowledge of native languages, the choice of remaining in their cadres, with the chance of promotion and consequent pay, or volunteering into a Staff Corps, which afforded great advantages as to promotion; and assured those who might be employed, pay equal to, if not better than, the rest of the army. A large number accordingly volunteered, and the pay of the Staff Corps proves how carefully the old rates of pay were recognised by the Secretary of State for India in Council. The regulations were as follows:—

Appendix, No. 2.

Artillery in India :  
Parliamentary  
Paper, 1859, p. 135.

	Within 200 Miles.	Beyond 200 Miles.
Pay and Indian Allowance -	<i>Rs. a. p.</i> 251 2 8	<i>Rs. a. p.</i> 251 2 8
Regimental House Rent -	50 - -	- - -
Tentage -	75 - -	75 - -
Extra Batta -	- - -	91 5 -
<i>Rs.</i>	376 2 8	417 7 8

\* Cochrane, p. 481.

#### STAFF CORPS RULES.

"VICTORIA R.,

"Whereas it is expedient to provide a body of officers for Our service in India, by whom various offices and appointments hitherto held by officers borne on the strength of the several corps or regiments of Our forces in India shall in future be held." General Order, paras. 66, 67.

"2. Officers, after 12 years' service, of which four must have been in the Staff Corps, to become captains. General Order, para. 84.

"After 20 years' service, of which six must have been in the Staff Corps, to become majors.

"After 26 years' service, of which eight must have been in the Staff Corps, to become lieutenant colonel.

"Five years' service in the Staff Corps as lieutenant colonel to entitle the officer so employed to the brevet rank of colonel."

General Order,  
paras. 93-99,

	Whilst required to remain in India. Per Mensum.	Out of India. Per Diem.
	<i>Rs. a. p.</i>	<i>£. s. d.</i>
"General officers - - - - -	1,295 5 -	1 5
Brevet Colonel and Lieutenant Colonel -	827 14 -	1 -
Major - - - - -	640 14 -	- 16 -
Captain - - - - -	374 1 6	- 10 6
Lieutenant - - - - -	225 12 -	- 6 6

General Order,  
para. 99.

"Every officer when in active employment will also receive, in addition to the above pay, such a sum as will make his total pay and allowances up to the sum assigned by the Government in India, with the approval of the Secretary of State for India in Council, as the consolidated pay of the office which he may hold. Eventually, a certain proportion of the senior officers of the Staff Corps will receive colonel's allowance."



Appendix, No. 2. The pay of Staff Corps Officers attached to Native Regiments was fixed as follows, in addition to Staff Corps pay:—

## CAVALRY REGIMENTS.

		Staff Salary per Mensem.
		<i>Rs.</i>
“Note.—The second in command and squadron officer will also each draw 30 rupees per mensem for payment of their respective squadrons, as soon as such payment is made over to them.	Commandant - - -	700
	*Second in Command and Squadron Officer.†	300
“The adjutant will also draw 50 rupees, office allowance.	*Second Squadron Officer† -	210
“The doing duty officer, who will perform any duties that may be assigned to him, such as would devolve upon a quartermaster, &c., will draw also 30 rupees per mensem, for writer and stationery.	*Third Squadron Officer† -	180
	Adjutant - - -	250
	†First Squadron Subaltern -	150
	Second Squadron Subaltern -	150

## INFANTRY REGIMENTS.

“Note.—The two wing commandants will each draw also 80 rupees per mensem, or 20 rupees per company, for the payment and repair of arms of companies of their respective wings, as soon as such charge and payment is made over to them.	Commandant - - -	600
	*Wing Officer Second in Command.	270
	*Wing Officer - - -	230
“The adjutant will also draw 50 rupees, office allowance.	Adjutant - - -	200
“The quarter master will also draw the present authorised contingent allowance for repair of tents, &c.	Quartermaster - - -	150
	†First Wing Subaltern -	100
	†Second Wing Subaltern -	100

§ Cochrane, p. 2. 186. “N.B.—The commandant of the Guide Corps will receive 800 rupees per mensem; of the Body Guard, 700 rupees per mensem; and of the Deolie and Erinpoorah forces, 600 rupees each per mensem.”

The Staff Corps regulations thus fix a certain salary for a Staff Corps Officer, and there is also a certain additional salary when attached to native regiments. The officers commanding these corps are now generally colonels, but the officers commanding wings or squadrons are sometimes lieutenant colonels, majors, or captains.

The duties of the wing officer, or the squadron officer are identical, whether he is a lieutenant colonel, a major, or a captain, but the addition of the staff pay and regimental allowance may be depending upon his substantive rank in the Staff Corps.

## PAY of OFFICERS employed in the ORDNANCE DEPARTMENT.

“In continuation of G. O., No. 156 A., dated 13th October 1863, the Governor General in Council is pleased to publish the following scale of staff salaries for the several appointments in the commissioned grades of the Ordnance Department of the three Presidencies.”

ORDNANCE

|| Cochrane, p. 265.  
Staff Appointments.

\* “General Order, 19th January 1864, No. 49.  
† “Officers commanding squadrons to draw 20 rupees per mensem for each troop for grain pots, &c.  
‡ “First and 2nd squadron and wing subalterns; General Order, 8th September 1865, No. 847, and General Order, 26th October 1866, No. 902.”

## ORDNANCE DEPARTMENTS.

	Per Mensem.
	Rs.
Inspector General of Ordnance, Bengal - - - - -	2,500
" " " Madras - - - - -	2,200
" " " Bombay - - - - -	2,200
Deputy Inspector General, Bengal - - - - -	1,000
" " " Madras - - - - -	800
" " " Bombay - - - - -	800
Superintendent Gun Foundry, Bengal - - - - -	1,000
Gun Carriage Agent, Bengal - - - - -	1,000
" " Madras - - - - -	800
" " Bombay - - - - -	800
Gunpowder Agent, Bengal - - - - -	1,000
" " Madras - - - - -	800
" " Bombay - - - - -	800
First Class Commissary, Bengal - - - - -	500
" " Madras - - - - -	500
" " Bombay - - - - -	500
Second Class Commissary, Bengal - - - - -	400
" " Madras - - - - -	400
" " Bombay - - - - -	400
Third Class Commissary, Bengal - - - - -	250
" " Madras - - - - -	250
" " Bombay - - - - -	250

Consolidated.

In addition to Regimental Pay and Allowance.

[G. O., 31 December 1863, No. 812.]

"The staff salary of the assistant to the Inspector General of Ordnance and Magazines is fixed at 500 rupees per mensem."—[G. O., 5 April 1864, No. 310.]

"The following military letter from the Secretary of State for India is published for general information:—

"I have considered in Council your letter, recommending that the rule hitherto in force in Bengal, by which officers serving in the Ordnance Department are granted regimental allowances at the field rate, wherever stationed, may be extended to the same class of officers at Madras and Bombay, in which presidencies, Ordnance officers now draw pay at full or half batta rates, according to their location.

Cochrane, p. 517.

"2. As these appointments may be considered in one sense as regimental appointments, and as the distinction between half and full batta stations, as affecting regimental officers as well as non-commissioned officers and soldiers, has been recently abolished, I shall not object to the proposed rule with regard to the pay of officers of the Ordnance Department.

"3. This measure, as you observe, will place all on the same footing, the only exception being that of Ordnance officers at the presidency, who, like other staff officers similarly situated, draw presidency rates of house-rent."

General Order, 12 April 1865, No. 388.

Indian pay has ever been considered due from the date of landing in India till the date of departure; the following were the rules in regard to this between 1872-74.

Extract of Government General Order, No. 1104, of 1859.

"His Excellency the Governor General in Council is pleased to notify that an officer of any of Her Majesty's British regiments whose promotion may be announced in the 'London Gazette,' shall receive Indian allowances of the higher grade from the day following the casualty by which he is promoted, if the casualty occurred in Europe, and in a corps of the Indian establishment.

Cochrane, p. 355.

"2. But in any other case the officer promoted will receive the allowances of the higher grade from the following dates, viz.:—

"1. If promoted in the room of an officer serving in India who may be transferred to or promoted in a corps on the Home Establishment; or promoted to the rank of general officer, or transferred to the unattached list from the day after the notification of the latter officer's transfer or promotion at the station where he may be serving.

"2. If promoted by an increase of the prescribed complement of officers in British regiments in India from the date of arrival in Calcutta of the mail steamer which may convey to India the 'London Gazette' announcing his promotion, and all the promotions in succession to him will carry superior allowances from the same date, though they may be notified in a subsequent 'London Gazette.'

"3. If promoted by a casualty occurring in India, to which another officer on the strength of a corps in India had been promoted *ad interim*, by the Commander in Chief in India from the day following the date of announcement of the promotion in General Orders in this country."

See also Paymasters' Instructions for Troops in British India: Calcutta, 1873, p. 17.

Appendix, No. 2. The allowances of officers in India were never withheld from them, except in cases of misconduct :—

Cochrane, p. 352. "Officers adjudged to be suspended 'from rank and pay,' without any mention of allowances, and the sentence so awarded confirmed by the Commander in Chief, not to be deprived of their allowances, including horse allowance and tentage."—[Decision, 1833; Code, 1845, p. 242.]

"Officers suspended from the service, or otherwise put out of employ, are entitled only to the pay and Indian allowances of their rank from the date of such suspension or removal until the determination of the home authorities is known."—[Pay Code, 1849 (120).]

"Officers suspended from rank and pay by sentence of a court-martial, cease to draw pay or allowances from date of confirmed suspension until date of re-instatement, both days inclusive."

"Officers suspended from military duty by order of Government, pending decision of the Home Government, receive the pay and Indian allowance of their rank until the orders of the Home Government are made known."—[Madras: Pay Code, 1861, p. 188.]

"With regard to officers confined for criminal offences, we positively direct that they be allowed to draw their pay only."—[D. of C. of D., 14 April 1813 (158-9).]

"We approve of the continuance of an officer's pay whilst undergoing the penalty of imprisonments under the sentence of a court-martial; but he can have no claim, when so circumstanced, to his allowances."—[Court of Directors, 27 April 1842, No. 17 (28) G. O., 14 June, No. 160.]

"The regimental allowances are withheld, the same being given in consideration of the performance of military service, of which an officer in imprisonment is incapable."—[Pay Code, 1849 (105), p. 353.]

"When an officer shall be considered by the enemy as a prisoner of war in India, he shall, during his residence on shore in India, receive the pay and half batta of the rank he may hold at the time of his capture, or may obtain by promotion there, but upon all other occasions during his captivity, whether on board ship in India, or ashore, or on board ship in Europe, he shall receive the pay of his rank only."—[G. O. G. G., 21 January 1843.]

\*Cochrane, p. 330.

In 1865, half batta and house-rent to regimental officers were abolished, and "from 1st January 1865, it was ordered that all officers, non-commissioned officers, and men in receipt of regimental pay and allowances wherever stationed, will draw such allowances at the full batta rate;"\* and on 7th March it was further notified, "That the pay and Indian allowances, extra batta and tentage of European commissioned officers, not being officers of the Staff Corps, or holding staff appointments, shall be considered a consolidated sum, and shall be drawn in one item as regimental pay and allowances without specifying the details of the several components."

Cochrane, p. 366.

Note 8, p. 39.

"2. It is to be distinctly understood that this consolidated sum contains the same fixed allowance as heretofore, on account of tentage, as follows, viz. :—

	Rs.	a.	p.
"Colonel - - - - -	200	-	-
"Lieutenant Colonel - - - - -	150	-	-
"Major - - - - -	120	-	-
"Captain and Paymaster - - - - -	75	-	-
"Lieutenant and Quartermaster - - - - -	50	-	-
"Cornet and Ensign - - - - -	50	-	-

"Horse allowance will continue to be drawn as a separate item."

"This order is applicable to the three presidencies."—[G. O., 7 March 1865, No. 238.]

#### HORSE ALLOWANCE.

Horse allowance is in lieu of stabling, forage, and grooming, whether in field or quarters. It was early fixed at 30 rupees a month. Officers in receipt of this allowance are bound to purchase and keep a certain number of chargers in proportion to their rank and nature of their duties. It formed no part of an officer's pay.—[G. O., 7 March 1865, No. 238.]

Cochrane, p. 367.

"Horse allowance will continue to be drawn as a separate item."

The Governor General in Council is pleased to notify that the staff salaries laid down in G. O., No. 161 A., dated 29th October 1863, are to be held to include the following sums as horse allowance, which, under the financial resolution, No. 8262, of the 2nd July 1861, is exempted from the payment of income tax.—[Cochrane, p. 201. See G. O., 7 March 1865, No. 237.]

Cochrane, p. 192.

"Officers of native infantry regiments are required to keep one charger only, but doing duty officers are only required to provide themselves with useful, inexpensive animals, of charger height, as it is not necessary, nor is it expected, that they should be mounted on the stamp of horse which is essential to officers of the mounted branches of the army."—[G. O. C. C., 22 June 1864; D. of S. of S., 8 August 1864, No. 257.]

#### CONTRACT ALLOWANCES.

In India, from motives of expediency, financial as well as political, the maintenance of arms and equipments, repairs of harness or saddlery, of gun carriages, shoeing of horses, &c.,

&c., were carried out by a system of contract allowances, the amounts being fixed by the Government of India, and the duties in connexion therewith being made obligatory on commanding officers, or captains of troops or companies. They were as follows in 1872:—

"TROOP AND COMPANY COMMAND.\*

Cochrane, p. 145.

	Per Month.
	Rs. a. p.
"Arms and Accoutrements, and Writing and Stationery":—	
"European artillery, per troop or company - - - - -"	30 - -
"Cavalry or infantry, regular, per troop or company - - - - -"	
"Sappers and miners - - ditto - ditto - - - - -"	20 - -
"Artillery, irregular - - ditto - ditto - - - - -"	
"Cavassons, Whips, Horse Drill Equipments:—	
"Horse artillery, horse light field battery, regular cavalry, per troop or battery - - - - -"	5 - -
"Contingent Allowance for†:—	
"Gun or howitzer, on its carriage, and with its ammunition waggon - - -"	15 - -
"Store cart, or spare ammunition waggon, or spare howitzer carriage - -"	5 - -
"Harness and Saddlery‡:—	
"Harness and saddles, per set—	
"Horse artillery - - - - -"	2 - -
"Horse light field battery - - - - -"	1 8 -
"Saddles, each—	
"Artillery, for outriders - - - - -"	1 - -
"Pots for soaking gram §:—	
"Horse artillery, horse light field battery, regular cavalry, per troop or battery - - - - -"	20 - -
"Shoeing and Veterinary Medicines for:—	
"Horses in regular cavalry, or irregular artillery - - - - -"	2 - -
i.e., for shoeing horse, repair and renewal of gear, store of nails and shoes, cloths, collars, and veterinary medicines for each horse - - - - -	
[Draft Pay Code, 1861 (1 & 2); Madras G.O., 29 June 1866, No. 252; Military Budget Estimate, 1866-7.]	

"Note.—In Bombay, an allowance of 3 rupees is drawn for each horse in cavalry regiments, under the denomination of 'allowance for shoes, head and heel ropes, &c.'"

"An uniform rule shall be established at the three presidencies, in accordance with the rule in England and elsewhere, by which captains of companies defray the cost of repair of the arms out of the contingent allowance drawn by them.

"Contingent allowance for the repairs of arms, accoutrements, &c., will accordingly be issued at the rate authorised in Bengal, twenty (20) rupees per mensem to officers commanding troops of dragoons (this sum is concluded in the consolidated contingent allowance in Bengal) and companies of European infantry at the three presidencies, out of which the armourer serjeants of regiments are to be paid for the repairs they may perform, according to the regulated scale of charges as laid down in Queen's Regulations of 1859, pages 103-108.—[G. O., 16 August 1861, No. 716].

Cochrane, pp. 148-9.

3. "In the Sappers and Miners the cost of repairing tools, under ordinary circumstances, will be met from the contingent allowances.

"In all European cavalry regiments on the Bengal establishment, the officer commanding a troop shall receive a consolidated allowance of 75 rupees per mensem, for command stationery, writing, repair of arms of every sort, gram pots, cavassons, &c.; in addition thereto, he will draw the authorised allowance for shoeing, &c., of horse, viz., two rupees each per mensem, for the number of horses present on the strength of the troops.—[G.O., 15 November 1858, No. 1,547.] "

As

\* "Viz., for writing and stationery: 20 rupees in European artillery, 10 rupees in other corps, the residue of the allowance being for repair of arms and accoutrements. The gross sum covers every expense, risk, or responsibility, whether arising from payment of the men, office charges, or repair of arms and accoutrements. But the browning of arms is distinct from repairs, and the work, when necessary, is executed by magazine establishments."

† "Inapplicable to the Royal Artillery, if furnished with English equipments."

‡ "Inapplicable to the Royal Artillery, if furnished with English equipments, or to dragoon corps of the British army."

§ "The officer receiving this allowance will provide, not merely the pots for soaking, but whatever else may be necessary for preparing the gram, before it is given to the horses for food."

Appendix, No. 2. As regards the Artillery, the contract system differed in the three presidencies, depending on whether the Government could do the work more economically in their own arsenals or not, and also on the organisation of the Artillery, the details of which were

Code of Regulations for the Bengal Presidency, by R. Kerr: Calcutta, 1845.

\* Page 34, Sec. III., Art. I., Government General Order, 4 August 1809.

† Page 34, Sec. III., Art. 3, Government General Order, 22 September 1817.

\* Ditto, Sec. III., para. 146.

necessarily, from time to time, affected by the improvements which have taken place in that branch of the service during the present century. In Bengal it was not till 1809 that the Horse Artillery was organised as an experimental corps\* into three troops; and till 1817 that the "Gallopers," as they were termed, were withdrawn from the regiments of native cavalry, forming three troops of Native Horse Artillery.† Field batteries were drawn by bullocks, with a driver to every two bullocks.\*

In 1809, by G. G. O., 4th August, the allowances of a troop (battery) of Horse Artillery were:—

Ditto, Sec. III., para. 84.

"For repairs and stationery, 60 rupees per mensem.

"For shoeing horses, supplying collars, cloths, head and heel ropes, curry combs, mussallahs, and physic, 2 rupees per mensem each horse.

"For repairs of harness, saddles and bridles, per set, 2 rupees per mensem each horse.

"For gram pots per troop, 20 rupees per mensem each horse.

"For tar, grease, charcoal, iron, and all contingencies of the waggons and store carts, 90 rupees per mensem each horse."

Ditto, §Sec. III., para. 103.  
†Sec. III., para. 164.

§ Government General Order, Sec. III., para. 184.

|| Sec. III., para. 194.

¶ Sec. III., para. 207.

Sec. III., para. 206.

In 1815 the artificers employed on the gun carriages, and the contract for the repair of ditto, were placed under the officer commanding the corps. But in 1828, G. G. O., 24th October, they were replaced under the officers in immediate command of troops, companies or detachments of Horse or Foot Artillery.‡ Agra, Cawnpore and Dum Dum were excluded from these contingent allowances by Order of 26th February 1820,‡ but experience proving that these were not done more economically by the Government, this was rescinded on 10 February 1826, as regards Agra and Cawnpore.§ The contract system was extended in 1834 to the Camel Batteries, the officer drawing 2 rupees 8 annas for each camel per mensem, out of which sum he was to supply ghee, mussallahs, and medicine, whips, lathees, curry combs, jhools, basket and feeding cloths, and provide for the repair of saddles and soaking of gram;|| and in 1842 it was extended to a battery furnished with elephants.¶

On 1st June 1842 there were in Bengal two camel field batteries, eleven bullock, one elephant, and four horse; but at all times the number of animals and strength of the battery fluctuated, and the contract proportionally. The nature of the work to be carried out under the contract was always most distinctly laid down.

In 1817 the Governor General in Council was "pleased to extend the regulations for the renewal of the saddlery of the cavalry to the gun harness in use with the Horse Artillery, and with the gallopers attached to regiments of dragoons or cavalry; but as harness, from the nature of the service, is more liable to accidents than saddlery, a new set of harness will be furnished at the public expense once in six years. The saddles and bridles, however, with their respective appointments pertaining to gun harness, will be renewed only once in eight years, as directed for the cavalry." And it was further ordered that—

"It will be the duty of all officers in command of divisions and stations, or of corps of Artillery, Cavalry and Infantry, under the regulations now published, to ascertain by frequent and minute inspections, that the saddlery, harness, equipments and accoutrements of their respective corps, are maintained in a perfectly efficient and serviceable state by the officers drawing the allowances for that purpose; and his Excellency the Right Honourable the Governor General in Council accordingly enjoins, on the part of all commanding officers, a particular attention to this most important duty.\*\* The first horsed field batteries were in 1819, and the contingent allowances settled proportionally to those of Horse Artillery.†† In 1820 it was ordered that "the contingent, gun allowance, and train establishment, is to be drawn in all situations for field guns, whether of the Horse or Foot Artillery, or local corps; and for all battering guns when received from the Ordnance Commissariat, halted or marching in the neighbourhood of a magazine or otherwise; officers of the Horse or Foot Artillery, drawing, separately, for the number of guns and carriages of their respective lines of service, actually present, for the state and condition of which they are held responsible.‡‡

"The Train Establishment and contingent allowance above granted, will, it is expected, provide for every repair required for carriages, however extensive; and reduce the indents on magazines to the article of half-wrought materials.

"If, under pressing circumstances, any other article should, however, be required from magazines for repairs on emergency, they are, on application by indent, to be issued under orders of the officer commanding on the spot; and the military board will cause their value to be deducted by paymasters from the allowances of officers receiving them.

"Commanding officers of stations, posts, and detachments, are strictly enjoined to make themselves perfectly acquainted, by personal inspection, with the state of efficiency in which the gun and ammunition carriages under their respective commands are kept; and are held responsible, by Government, for reporting all neglects, or causes of inefficiency, to the military board.††

"In

\*\* Sec. II., p. 14, Government General Order, 10 January 1817.  
†† Sec. III., p. 151.

‡‡ Government General Order, 26 February 1820, Sec. III., paras. 163-7.

" In 1842 it was ordered that, considering the liberal allowance granted for the purpose to officers commanding troops and companies, it is expected that these articles shall be kept in a perfectly efficient state during the whole of the several periods assigned; and officers commanding corps are reminded that it is an essential part of their duty to see that the orders of Government on this subject are duly regarded.

Appendix, No. 2.

" It is further intimated, that as regards saddles and harness, the sets, as issued from the Government stores, are to be maintained complete in all respects from the contract allowance, and that renewals on account of condemnations or loss, of component parts of such sets, are not admissible."

Sec. II., p. 21.  
Government  
General Order,  
No. 261, 14 October  
1842.

In 1843 the Bengal system was extended in its entirety to Bombay, and the following order issued:—

" Government General Order, 30th April 1841, B.M.B.L., 19th January and 23rd February 1843.

Jameson's Code,  
Artillery, Sec. IV.,  
pp. 31, 32.

" Under the authority of the Supreme Government, and in accordance with the Bengal practice, the following system of providing for the repairs of batteries of horse and foot artillery established, to have effect from the 1st May 1841:—

" An allowance of 15 rupees for each gun and its corresponding ammunition waggon, and 5 rupees for each additional spare carriage or waggon, is authorised to be drawn by the officer in charge of the company or troop, from which he will supply water, tar, grease, iron, steel, wood, charcoal, and such other articles as are required for repairs. Oil, cloth, and other articles required for the cleaning and preservation of ordnance carriages and their appurtenances attached to the horse and foot artillery batteries are also provided out of the allowance, and not issued gratuitously from the public stores.

" This allowance, however, will not be drawn for guns stationed at the Presidency, where batteries will be kept in repair by the ordnance department as heretofore.

" It is expected that the allowance above granted will provide for every kind of ordinary repair required for carriages, and, consequently, from the 1st May 1841, no requisition will be sanctioned on arsenals for repairs, although under peculiar circumstances officers will be permitted to indent for such articles as may not be otherwise procurable, the value of the stores thus supplied being recovered from the indenting officers by divisional paymasters, under existing regulations.

" When officers have occasion to transfer or return into an arsenal, for deposit, or any other purpose, any of the ordnance or carriages for which they have been drawing the monthly allowance, the same are to be surveyed, and any repair required (accidents arising from service excepted) made at the expense of the officer delivering over charge.

" The gun contingent allowance will be drawn on monthly certificates, countersigned by the local commanding officers of artillery, enumerating the carriages, &c., and certifying their efficiency. The state of the wheels to be particularly noticed in the certificates.

" No allowance will be granted for ordnance carriages lent from arsenals for annual practice, all repairs of such being undertaken by the local commissary.

" The following list shows the articles required to be repaired from the contingent allowance, but supplied or renewed at the expense of Government on indent:—

" Axes, felling, and all tools immediately attached to the Ordnance.

Boxes, ammunition.

Ditto, store limber.

Chains of all kinds.

Drag ropes.

Poles.

Shafts.

" The following articles are to be kept in repair, and renewed from the contingent allowance:—

Bitts, gun.

Buckles, strap.

Drifts, gun.

Esses, iron.

Felloes for the repair of wheel (babulwood).

Helves, or handles for tools.

Leather.

Linch-pins.

Match { iron sockets  
ditto, loops.

Port fires { iron sockets.  
ditto, nippers.

Perches of carriages.

Spokes for wheels.

Sponges, complete.

Washers.

Wadhooks.

Wires, priming.

Yokes.

" All planks, felloes, spokes, and other articles which may be indented for upon arsenals, in consequence of supplies not being otherwise procurable, will be issued for payment at the rates fixed by the Military Board, by whom the indents will be passed and recoveries arranged under existing regulations.

" Contingent gun allowance is invariably to be drawn by the officer actually exercising the command.

" All

## Appendix, No. 2.

" All damage done to carriages by an enemy will be repaired at the expense of Government.

" Officers in charge of batteries will immediately indent for such articles of equipment as are necessary to complete the established proportion of stores allowed to each gun, &c., all deficiencies in which will, from the 1st May 1841, be replaced by the drawing the contingent allowance.

" All field ordnance carriages attached to batteries of horse or foot artillery are from 1st May 1841, to be painted with two coats of good paint, at least once annually. Painters and materials to be furnished from the nearest arsenal, under the authority of the Military Board."

° General Order,  
13 Aug. 1858, No. 1,  
192. 1858.

Cochrane, pp. 146  
and 147.

The Royal Artillery was first sent to India in 1857. They took with them their full English equipments. And on the 1st August\* 1858, under instruction from the Home authorities, it was announced in orders in Bengal that no contract allowances were to be drawn "for the repair of guns, carriages, carts, harness, and saddlery"; but that equipments of all kinds for the Royal Artillery in India, and materials of all kinds for keeping them serviceable, would be supplied from magazines. In January 1860, it was announced that contract allowances are not authorised for the repair of material equipments of heavy batteries attached to companies of Royal Artillery, or of the Artillery of Her Majesty's Indian forces.

" Repairs will be effected conformably with the Government General Order, No. 1,192, dated 13th August 1858, and the sums expended in repairs will be paid on contingent bills, which will be audited in the Ordnance Audit Department.—(G.O., 20 January 1860, No. 61.)"

In accordance with the recommendation of a Special Committee which sat at Meerut, it was in November 1862 directed that " the contract system, as it had existed in the late Bengal Artillery, should be universally adopted."

Cochrane, p. 324.

Subsequently it was decided " that no contract or contingent allowances should be issued for the guns, carriages, carts, saddlery, or harness of heavy batteries, all repairs were to be effected by the artificers attached or in the station arsenal," and the battery command allowance was fixed at 250 rupees.

In 1872 the following were the Artillery contract amounts in addition to command and repair of arms in horse and light field batteries:—

## " HORSE ARTILLERY.

	Rs.	a.	p.
Gun allowance, 6 guns on carriages, at 15 rupees	90	—	—
Spare waggons, 6 at 5 rupees	30	—	—
One forge cart	5	—	—
Two store carts, at 5 rupees	10	—	—
Two spare carts, at 5 rupees	10	—	—
Hospital cart	5	—	—
Shoeing horses, 178 at 2 rupees	356	—	—
Sets of harness, 90 at 2 rupees	180	—	—
Saddles, 70 at 1 rupee	70	—	—
Grain pots	20	—	—
Cavassons	5	—	—
Petty Stores	2	12	—

Cochrane, p. 322.

## " LIGHT FIELD BATTERY.

Gun allowance for 6 guns on carriages, at 15 rupees	90	—	—
Spare waggons, 6 at 5 rupees	30	—	—
One forge cart	5	—	—
Two store carts, at 5 rupees	10	—	—
Two spare carts, at 5 rupees	10	—	—
Hospital cart	5	—	—
Shoeing 110 horses, at 2 rupees each	220	—	—
Sets of harness, 90 at 1½ rupees	135	—	—
Saddles, 20 at 1 rupee	20	—	—
Grain pots	20	—	—
Cavassons	5	—	—
Petty stores	—	12	—

Cochrane, p. 323.

Shoeing allowance includes what is called line gear, viz., blankets, head stalls, nosebags, picketing ropes and pegs, and currycombs, physic; the allowance of two rupees dates 16th April 1793.

Saddlery allowance, 1801.

Gun and contingent, 1809; and spare waggon allowance, 1820.

Contract allowances formed no part of an officer's pay, and were also, in consequence, exempt from income tax.

Appendix, No. 2.

Kerr, Sec. II.,  
95-6.

Sec. II., 3.

Sec. III., 162.

"Under authority of the Government, it is hereby notified, that compensation for the loss of contract allowances is inadmissible during occasional absence on duty or on leave, and that during such absence, the rule laid down in Article 13,\* Section II., of the Pay Code of 1849, is applicable to squadron and wing officers of the Indian Army, as well as to battery, troop, and company commanders in the British Service, who retain, in right of their commands, the contract allowance for the repairs of arms and for stationery, and defray all expenses connected with such contract as may be incurred by the officer in temporary charge.—(G. O. C. C., 19 May 1864.)"

\*Cochrane, p. 149.

"When an officer commanding a troop of cavalry, or horse artillery in his own right, is absent on leave within the limits of the presidency, either on medical certificate or private affairs, he is entitled to receive the contract allowance for the repairs of saddles and harness, and head and heel ropes, &c.; the officer in command only receiving the command and stationery allowance, and accounting to the absentee for any surplus that may arise from the contract allowance, or calling upon him to make good any deficiency that may be caused by an unusual expenditure in replacing articles worn out."

Jameson's Code,  
Sec. XIV., para. 160.

"An officer absent from regimental duty beyond the period authorised by the regulations, viz., two years on medical certificate, or six months on private affairs, forfeits all claim to retain the troop contract from the expiration of such period."

"Contingent gun allowance is invariably to be drawn by the officer actually exercising the command."

When an officer was appointed to a troop or battery to supply a vacancy, he was required to purchase, at a valuation, such of the stock ordered to be kept up as remained in store, the property of his predecessor; and whenever an officer was removed from a troop or battery, the horse, furniture, and stores were surveyed by a committee, and he was called upon, previous to his departure, to make good all deficiencies according to an adjustment to be determined by the regimental commanding officer.

Parliamentary  
Report, Artillery  
Forces, India, 1859.  
Minute by H. E.  
C. I. C. Sir P. Grant,  
p. 36.

In February 1871 the force of artillery in India was reduced by several batteries. As was usual, indeed necessary, the commanding officers had a considerable stock of all sorts of materials requisite to maintain the efficiency of their batteries. In the purchase of these stores they had sunk a considerable sum, confidently believing that in the event of their leaving their batteries, their successors would as usual take everything off their hands. They were informed by a telegram that their batteries were to embark for England in rather less than a fortnight. As these were not to be relieved, they were forced to sell all their stores by auction, and there being no demand for such articles, they lost considerably by the transaction, by the enforced hurried sale of chargers and equipments.

On arrival in England they applied for compensation, but were reminded that as they drew a liberal allowance for the supply of such articles, they must accept the losses as well as the profits.

## NOTES referred to in the foregoing STATEMENT.

### NOTE 1.

3 & 4 Will. 4, cap. 85. (A.D. 1833).

XXX. And be it enacted, that no orders, instructions, despatches, official letters, or communications whatever, relating to the said territories or the government thereof, or to the property or rights vested in the said company in trust as aforesaid, or to any public matters whatever, shall be at any time sent or given by the said Court of Directors, or any committee of the said directors, until the same shall have been submitted for the consideration of, and approved by, the said board, &c.

### NOTE 2.

ENCYCLOPEDIA BRITANNICA (Hindustan Article), by Edward Thornton, India House.

P. 58, vol. xi.

The commercial monopoly of the East India Company was granted by William III., 1698, and it was confirmed by the 9 & 10 Will. 3, c. 44. The legislative enactments regarding the territorial possessions of the company commenced in 1767. In that year it was agreed that, in consideration of an annual payment of 400,000 £., the territorial possessions should remain in possession of the company for two years, and afterwards for five years from 1st February 1769. There was paid to the public under these two Acts, from 1768 to 1775, the sum of 2,169,398 £. In 1773 the affairs of the company were much embarrassed, and they presented a petition to Parliament, soliciting a loan for four years, and a sum of 1,400,000 £. was accordingly lent; and at this time Parliament first assumed the regulation of the company's affairs. The

0.70.

E

dividend



## Appendix, No. 2.

dividend was restricted to 6 per cent. till this loan should be repaid, and afterwards to 7 per cent. . . . The loan of 1,400,000 £. having been discharged, two other Acts were passed, by which the territory was continued to the company for one year. In 1781 an Act was passed continuing the territorial revenues and privileges of the company till the 1st March 1791, and then to be taken away, only on a three years' notice; providing also that the company should pay annually 400,000 £. to the public, besides three-fourths of any surplus revenue that might accrue. Under this Act the company paid to the public 400,000 £. in satisfaction of all claims up to the 1st March 1781. But of the annual sum of 400,000 £. which was afterwards to be paid, the public received only 300,000 £., and in 1783 the company were allowed to borrow 800,000 £., and out of this borrowed money to pay a dividend of 8 per cent. By the Act of 33 Geo. 3, c. 52, passed in 1793, the British territories in India, together with the exclusive trade, were continued to the company for 20 years; and the company agreed to pay 500,000 £. annually, unless prevented by war expenditure. But only two payments were made, of 250,000 £. each, under this Act, in 1793 and 1794.

## NOTE 3.

## GEORGE, REX.

Jameson's Code,  
edition 1844,  
Sec. XVI., par. 5.

6. Whereas we were pleased, by our Warrant, bearing date the 28th March 1788, to direct, that the officers in the service of the United Company of Merchants trading to the East Indies, should be admitted to a participation of rank in our Army serving in India: We do hereby give you full power and authority to grant brevet commissions in our service, to all the said company's officers now serving abroad, conferring upon them the same rank in our Army in the East Indies only, as they now enjoy in the company's service, the commissions to bear the respective dates of their present commissions in the service of the said company. And we do further give you full power and authority to continue, from time to time, to grant like commissions, giving similar rank in our Army in the East Indies only, to all such officers as shall be hereafter appointed or promoted in the company's service.

7. And all such officers to whom you shall grant commissions in the manner herein directed, are to be acknowledged and to command in their respective stations, as if they had received commissions from us.

Given at our Court at St. James's, this 9th day of June 1810, in the fiftieth year of our reign.

To our Trusty and Well-beloved George Hewett, Esq.,  
Lieutenant General of our Forces, &c., &c., &c.

By His Majesty's Command,  
(signed) *Liverpool.*

## NOTE 4.

## DAILY PAY of Each Rank in His Majesty's Land Forces on the British Establishments in 1800.

	Royal Regiment of Horse Guards.		Dragoons.		Foot Guards.		Foot.	
	Full Pay.	Subsist.	Full Pay.	Subsist.	Full Pay.	Subsist.	Full Pay.	Subsist.
	£. s. d.	£. s. d.	£. s. d.	£. s. d.	£. s. d.	£. s. d.	£. s. d.	£. s. d.
Colonel and Captain - - - -	2 1 -	1 11 -	1 15 -	1 6 6	1 19 -	1 10 -	- 4 -	- 18 -
Lieutenant Colonel and Captain - -	1 9 6	1 2 6	1 4 6	- 18 6	1 8 6	1 1 6	- 17 -	- 13 -
Major and Captain - - - -	1 7 -	1 1 6	1 - 6	- 15 6	1 4 6	- 18 6	- 15 -	- 11 6
Captain - - - -	1 1 6	- 16 -	- 15 6	- 11 6	- 16 6	- 12 6	- 10 -	- 7 6
Captain Lieutenant or Lieutenant - -	- 15 -	- 11 6	- 9 -	- 7 -	- 7 10	- 6 -	- 4 8	- 3 6
Cornet Horse Guards and Dragoon Ensign, Staff General Ensigns or 2nd Lieutenant								
Foot - - - -	- 14 -	- 11 -	- 8 -	- 6 -	- 5 10	- 4 6	- 3 8	- 3 -
Chaplain - - - -	- 6 8	- 5 -	- 6 8	- 5 -	- 6 8	- 5 -	- 6 8	- 5 -
Adjutant (Solicitor in Foot Guards the same)	- 5 -	- 4 6	- 5 -	- 4 6	- 4 -	- 3 -	- 4 -	- 3 -
Quartermaster - - - -	- 8 6	- 6 6	- 5 6	- 4 -	- 4 -	- 3 -	- 4 8	- 3 6
Surgeon - - - -	- 6 -	- 4 6	- 6 -	- 4 6	- 4 -	- 3 -	- 4 -	- 3 -
Surgeon's Mate - - - -	- - -	- - -	- - -	- - -	- 3 -	- 3 -	- 3 6	- 3 -
Drum Major - - - -	- - -	- - -	- - -	- - -	- 1 -	- 1 -	- - -	- - -
Deputy Marshal - - - -	- - -	- - -	- - -	- - -	- 1 -	- - -	- - -	- - -
Serjeant - - - -	- - -	- - -	- 2 9	- 2 3	- 1 10	- 1 4½	- 1 6	- 1 -
Corporal (Kettle drum in Horse Guards the same)	- 3 -	- 2 6	- 2 3	- 1 9	- 1 2	- - 10	- 1 -	- - 8
Drummer - - - -	- 3 -	- 2 6	- 2 3	- 1 -	- 1 2	- - 8½	- 1 -	- - 6
Trumpeter - - - -	- 2 8	- 2 -	- - -	- - -	- - -	- - -	- - -	- - -
Private Man - - - -	- 2 6	- 2 -	- 1 9	- 1 5	- - 10	- - 6½	- - 8	- - -
Allowance on the Establishment to	- 4 -	- 2 -	- 2 6	- 1 2	- 1 7½	- - 6½	- 1 2	- - 6
Colonel	- - -	- - -	- 2 -	- 1 6	- - -	- 1½	- - -	- - -
Do. for Hautbois	- - -	- - -	- - -	- - -	- - -	- - -	- - -	- - -
Captain	- 4 -	- 4 -	- 2 4	- 1 1½	- 1 -	- 1 -	- 1 -	- 1 -
Agent	- 2 -	- 2 -	- 1 2	- 1 2½	- - 6½	- - 6½	- - 6	- - 9

[The Royal Kalendar; or, complete and correct Annual Register for England, Scotland, Ireland, and America, year 1800.]

DISTRIBUTION OF PRIZE MONEY AND GRATUITY to the several RANKS of the MAIN ARMY in INDIA, each Gratuity being 12 Months' Batta.

Appendix, No. 2.

Dirom's Narrative, p. 260.

	Prize Money.	Gratuity by Earl Cornwallis.	Gratuity by the Court of Directors.	Total.
	£. s. d.	£. s. d.	£. s. d.	£. s. d.
Colonel	297 12 -	432 - -	432 - -	1,161 12 -
Lieutenant Colonel	248 - -	360 - -	360 - -	968 - -
Major	198 8 -	268 - -	268 - -	734 8 -
Captain	78 2 -	115 4 -	115 4 -	308 10 -
Lieutenant	52 1 6	76 16 -	76 16 -	205 13 -
Ensign	39 10 6	57 12 -	57 12 -	154 14 6
Serjeant	7 11 6	10 16 -	10 16 -	29 3 6
Corporals, Drummers, and Privates	3 15 9	5 8 -	5 8 -	14 11 9
NATIVE TROOPS:				
Subidar	7 - 6	10 5 9	10 5 9	27 12 -
Jemidar	3 10 3	5 2 10½	5 2 10½	13 16 -
Havildar	3 - 2	4 8 -	4 8 -	11 16 2
Raics, Drummers, and Privates	1 10 1	2 4 -	2 4 -	5 18 1

N.B.—The shares of the prize money in the Bombay army, and in the detachments with the Mahrattas and the Nizams are not known, and will vary according to the amount of their captures; but the gratuity, equal to twelve months' batta is general to the whole of the troops that were employed above the ghauts at the conclusion of the war. Officers on the general staff, or on the staff of corps, shared according to the rate of batta or field allowance attached to their appointments.

[Campaign in India, 1792, by Major Dirom, Deputy Adjutant General, p. 260.]

NOTE 5.

GENERAL ORDER by Earl Cornwallis.

Original Papers, Appendix, p. 25, B.

Head Quarters, Camp at Turromallysagum, 31 May 1791.

"THE great deficiency of bullocks which has been experienced for a very considerable time by every corps and department of the Army, and the serious injury which has been occasioned thereby to the Public Service, render it peculiarly necessary at this time to endeavour to obtain by every possible means a supply of cattle to answer the exigencies of the Service, exclusive of those that the bullock contractors furnish. Lord Cornwallis has therefore judged it expedient not only to establish an agent to procure bullocks, and to have the charge of the part of those he may be able to provide, but has also conceived that it may prove a very useful measure by augmenting still further the channel through which cattle may be supplied, if all the camp equipage of the Army, the tents for the non-commissioned officers and privates of European corps excepted, and all the regimental stores attached to the native corps, should in future be transported by means of carriage to be provided by individuals, on their being allowed a certain sum monthly for that expense and risk."

"The new arrangements relative to camp equipage and the carriage of the regimental stores of native corps which is now offered for the consideration of the Army, is as follows:

"Each officer is to be at the expense of providing, carrying, and pitching his own tent; besides which officers commanding the native corps are to be at the expense of providing, carrying, and pitching the tents for their serjeants, for the natives of their corps, and the hospital tents."

NOTE 6 (1).

DID not Lord Cornwallis in 1794 recommend to His Majesty's Ministers a plan for new modelling the Army in India?—He did, in a letter to the President of the Board of Control.

Was not one of the principal objects of the plan to prevent the continuance or revival of those discontent and jealousies which had so often manifested themselves between the King's and Company's troops, as well as between the servants belonging to the different Presidencies?—It was; I believe his Lordship, as far as my memory serves, stated as much in the very words of the question

"The allowances of officers of Her Majesty's Service are to be made equal to the allowances of officers of corresponding rank in the Company's Service." [Despatch, Court of Directors, 31st May 1809 (90-1), 30th September 1825. General Order, 14th April 1826. No. 78.]

"In all cases in which the King's pay exceeds the Company's, a deduction is to be made from the Batta." [General Order, 14th April 1826 No. 78.] Cochrane, p. 329.

29. "The Right Honourable the Governor General in Council is pleased to publish the following extract from a letter from the Honourable the Court of Directors, dated 30th September 1825, and copies of letters from the War Office therein referred to.

30. (Paragraph 7.) "We transmit a number in the packet, copy of a letter which we have received from the Department of His Majesty's Secretary at War, dated 3rd September 1825, communicating a regulation recently adopted respecting the pay of Captains of His Majesty's Regiments of Infantry.

31. "In giving effect to this regulation in the case of officers serving in India, you will take care so to adjust the amount of Company's allowances as that the total regimental receipts of a Captain of Infantry in the King's Service shall not exceed those of an officer of the same rank in the Company's service." Cochrane. Pay and Allowances General, pp. 347-8.

"Being of opinion that by granting to these officers the full rates of pay while serving in India, as well as on their passage out and home, the question itself would be simplified, and the officers better satisfied that His Majesty's gracious intention had not been withheld from them, we direct that you will adopt this rule, making at the same time a corresponding deduction in their other allowances, in order that the principle of granting equal remuneration to officers of equal rank, both in the King's and Company's Service, may not be departed from." [Court of Directors, 5th June 1833. No. 54.] Page 351.

Parliamentary Committee: "Affairs, East India Company," 1813.—Evidence of Sir John Malcolm. Cochrane, p. 346.

Kerr, p. 893.

NOTE 6 (2).

PAY and ALLOWANCES of the Commissioned Officers of a Regiment of Her Majesty's Dragoons.

RANK AND DESIGNATION.		Queen's Pay and Honourable Company's Allowances, with difference between Queen's Pay and Company's Pay added or deducted, as necessary, and inclusive of Non-Effective Allowance, when such is authorised.															Totals for any Month			
		Queen's Pay for					Full Batta for					Half Batta for					Gratuity	Tentage	Horse Allowance	
1 Day.	28 Days.	29 Days.	30 Days.	31 Days.	28 Days.	29 Days.	30 Days.	31 Days.	28 Days.	29 Days.	30 Days.	31 Days.	28 Days.	29 Days.	30 Days.	31 Days.	For any Month.	When in the Field, or Marching.	When at a Half Batta's Station, being furnished with Quarters.	When at a Half Batta's Station, not furnished with Quarters.
s. d.	R. s. d. p.	R. s. d. p.	R. s. d. p.	R. s. d. p.	R. s. d. p.	R. s. d. p.	R. s. d. p.	R. s. d. p.	R. s. d. p.	R. s. d. p.	R. s. d. p.	R. s. d. p.	R. s. d. p.	R. s. d. p.	R. s. d. p.	R. s. d. p.	R. s. d. p.	R. s. d. p.	R. s. d. p.	R. s. d. p.
Lieutenant Colonel {Senior	23 -	269 14 -	279 8 8	283 2 5	288 12 6	617 3 -	607 7 9	607 13 7	607 13 7	608 3 6	588 3 6	312 12 -	303 1 9	293 7 7	283 13 6	-	150	130 -	882 10 -	989 10 -
Junior	23 -	257 9 7	266 12 10	276 -	285 3 2	629 6 5	620 8 2	611 -	601 12 10	601 12 10	588 3 6	325 - 5	315 13 2	306 10 -	297 6 10	-	150	120 -	882 10 -	989 10 -
Major {Senior	19 3	227 14 -	236 - 3	244 2 5	253 4 8	461 8 4	453 6 1	445 3 11	437 1 8	437 1 8	424 1 8	233 3 10	225 1 7	216 15 5	208 13 2	-	120	120 -	701 1 10	781 1 10
Junior	19 3	215 9 7	223 4 10	231 -	238 11 2	473 12 9	468 1 6	468 6 4	460 11 2	460 11 2	447 11 2	245 8 8	237 13 -	230 1 10	222 6 8	-	120	120 -	701 1 10	781 1 10
Captain	14 7	163 5 4	169 2 8	175 -	180 13 4	198 11 -	192 13 8	187 - 4	181 3 -	181 3 -	168 11 4	107 6 -	101 8 8	96 11 4	89 14 -	-	75	90 -	471 11 4	531 11 4
Lieutenant	9 -	100 12 10	104 6 5	108 -	111 9 7	130 7 2	126 13 7	123 4 -	119 10 5	119 10 5	103 12 5	69 9 2	65 15 7	63 6 -	58 12 5	-	50	60 -	304 6 -	334 6 -
Cornet	8 -	89 9 7	92 12 10	96 -	99 3 2	99 - 9	95 13 6	92 10 4	89 7 2	89 7 2	83 12 8	53 6 3	50 3 -	48 15 10	43 13 8	-	50	60 -	264 15 10	289 15 10

PAY and ALLOWANCES of the Commissioned Officers of a Regiment of Her Majesty's Infantry.

RANK AND STATION.		Queen's Pay and Honourable Company's Allowances, with difference between Queen's Pay added or deducted, as necessary, and inclusive of Non-Effective Allowances, when such is authorised.															Totals for any Month					
		Queen's Pay for					Full Batta for					Half Batta for					Gratuity any Month.	Tentage any Month.	Horse Allowance any Month.	When at a Half Batta's Station, furnished with Quarters.	When at a Half Batta's Station, not furnished with Quarters.	When in the Field, or Marching.
		1 Day.	28 Days.	29 Days.	30 Days.	31 Days.	28 Days.	29 Days.	30 Days.	31 Days.	28 Days.	29 Days.	30 Days.	31 Days.	28 Days.	29 Days.						
s. d.	Rs. a. p.	Rs. a. p.	Rs. a. p.	Rs. a. p.	Rs. a. p.	Rs. a. p.	Rs. a. p.	Rs. a. p.	Rs. a. p.	Rs. a. p.	Rs. a. p.	Rs. a. p.	Rs. a. p.	Rs. a. p.	Rs. a. p.	Rs. a. p.	Rs. a. p.	Rs. a. p.	Rs. a. p.	Rs. a. p.	Rs. a. p.	
Lieutenant-Colonel {Senior	17 -	202 11 4	209 15 2	217 3 -	224 6 10	649 8 8	643 4 10	635 1 -	627 12 2	627 12 2	614 7 3	345 2 8	337 14 10	330 11 -	323 7 2	100 -	150 -	80 -	727 14 -	827 14 -	1,032 4 -	
Junior	17 -	190 6 5	197 3 2	204 -	210 12 9	661 13 7	655 - 10	648 4 -	641 7 3	641 7 3	628 14 10	357 7 7	350 10 10	343 14 -	337 1 8	100 -	150 -	80 -	727 14 -	827 14 -	1,032 4 -	
Major - {Senior	16 -	191 7 7	198 5 -	205 2 5	211 15 10	447 11 5	440 14 -	434 - 7	427 3 2	427 3 2	414 14 8	219 6 11	212 9 6	205 12 1	198 14 8	80 -	120 -	80 -	560 14 6	640 14 6	789 3 -	
Junior	16 -	179 3 2	186 9 7	192 -	198 6 5	469 15 10	463 9 5	447 3 -	440 12 7	440 12 7	428 14 6	231 11 4	225 4 11	218 14 6	212 8 1	80 -	120 -	80 -	560 14 6	640 14 6	789 3 -	
Captain (being a Brevet Field Officer)	13 7	183 2 1	187 9 1	193 -	198 6 11	182 3 11	146 12 11	141 6 -	135 16 1	135 16 1	122 11 10	60 14 11	56 7 11	50 1 -	44 10 1	50 36	75 -	-	334 1 -	374 1 -	415 6 -	
	11 7	139 11 9	144 5 10	149 -	153 10 2	174 10 3	170 - 2	165 6 -	160 11 10	160 11 10	147 11 2	83 5 8	78 11 2	74 1 -	69 6 10	50 36	75 -	-	324 1 -	374 1 -	415 6 -	
Lieutenant {above 7 years' service, under 7 ditto	7 6	84 -	87 -	90 -	93 -	98 10 -	95 10 -	92 10 -	89 10 -	89 10 -	87 12 -	37 12 -	34 12 -	31 12 -	28 12 -	20 24	50 -	-	195 12 -	235 12 -	266 10 -	
	6 6	72 12 9	75 6 5	78 -	80 9 7	109 13 3	107 3 7	104 10 -	102 - 5	102 - 5	48 15 3	46 5 7	43 12 -	41 2 5	30 24	50 -	-	-	195 12 -	235 12 -	266 10 -	
Ensign	5 3	58 12 9	60 14 5	63 -	65 1 7	81 15 8	79 14 -	77 12 5	75 10 10	75 10 10	36 5 2	34 3 6	32 1 11	30 - 4	25 12	50 -	-	-	157 1 11	182 1 11	202 12 5	

## NOTE 7

By the Honourable the President of the Council of India in Council ; Fort William, 21 November 1845.

Head Quarters, Camp, Umballah, 4 December 1845.

For the purpose of simplifying the duties of the Pay and Audit Departments, the Honourable the President in Council is pleased, under authority from the Honourable the Court of Directors, and with the concurrence of the Right Honourable the Governor General, to determine that the pay, half batta, and gratuity of the European officers, both of Her Majesty's and the Honourable Company's Service, together with the non-effective allowance received by certain classes of the former, shall be included in one sum, under the denomination of pay and Indian allowances, leaving extra batta, house rent, tent, and horse allowance to be separately drawn, as at present, according to the Table No. 1 annexed.

Table No. 2 exhibits the subsistence or pay proper of European commissioned officers, converted at the exchange of 2 s. 0½ d. (two shillings and halfpenny) per Company's rupee, and admissible to them when not in receipt of regimental or staff allowances.

The above arrangement to have effect at the three Presidencies from the 1st January next.

(signed) *W. M. N. Sturt*, Major,  
Officiating Secretary to the Government of India, Military Department.

No. 1.—TABLE of PAY and ALLOWANCES of the EUROPEAN COMMISSIONED OFFICERS of HER MAJESTY's and the HONOURABLE COMPANY'S SERVICE at the Three Presidencies, in Cantonments and in the Field.

C O R P S AND R A N K.	In Garrison or Cantonment within 200 Miles of direct Distance from the Seat of Government, of each Presidency.					In the Field, and in Garrison or Cantonment, beyond 200 Miles of direct Distance from the Seat of Government of each Presidency.				
	Pay and Indian Allowance.	Regimental House Rent.	Horse Allowance.	Tentage.	TOTAL.	Pay and Indian Allowance.	Extra Batt.	House Allowance.	Tentage.	TOTAL.
HORSE ARTILLERY, same as CAVALRY.										
FOOT ARTILLERY :	<i>Rs. a. p.</i>	<i>Rs.</i>	<i>Rs. a. p.</i>	<i>Rs.</i>	<i>Rs. a. p.</i>	<i>Rs. a. p.</i>	<i>Rs. a. p.</i>	<i>Rs. a. p.</i>	<i>Rs.</i>	<i>Rs. a. p.</i>
Colonel - - -	1,065 5 -	-	30 - -	200	1,295 5 -	1,065 5 -	- -	30 - -	200	1,295 5 -
Lieutenant Colonel - -	547 14 -	100	30 - -	150	827 14 -	547 14 -	304 6 -	30 - -	150	1,032 4 -
Major - - -	410 14 6	80	30 - -	120	640 14 6	410 14 6	228 4 6	30 - -	120	789 3 -
Captain or Surgeon - -	267 5 -	50	- -	75	392 5 -	267 5 -	91 5 -	- -	75	433 10 -
Lieutenant or Assistant Surgeon.	154 14 -	30	- -	50	234 14 -	154 14 -	60 14 -	- -	50	265 12 -
Second Lieutenant - -	117 10 6	25	- -	50	192 10 6	117 10 6	45 10 6	- -	50	213 5 -
ENGINEERS, same as FOOT ARTILLERY.										
EUROPEAN AND NATIVE INFANTRY :										
Colonel - - -	1,065 5 -	-	30 - -	200	1,295 5 -	1,065 5 -	- -	30 - -	200	1,295 5 -
Lieutenant Colonel - -	547 14 -	100	30 - -	150	827 14 -	547 14 -	304 6 -	30 - -	150	1,032 4 -
Major - - -	410 14 6	80	30 - -	120	640 14 6	410 14 6	228 4 6	30 - -	120	789 3 -
Captain or Surgeon - -	249 1 -	50	- -	75	374 1 -	249 1 -	91 5 -	- -	75	415 6 -
Lieutenant or Assistant Surgeon.	145 12 -	30	- -	50	225 12 -	145 12 -	60 14 -	- -	50	256 10 -
Ensign - - -	107 1 11	25	- -	50	182 1 11	107 1 11	45 10 6	- -	50	202 12 6
NATIVE CAVALRY :										
Colonel - - -	1,158 7 -	-	120 - -	200	1,478 7 -	1,158 7 -	- -	120 - -	200	1,478 7 -
Lieutenant Colonel - -	582 10 -	100	120 - -	150	952 10 -	582 10 -	304 6 -	120 - -	150	1,157 - -
Major - - -	461 1 10	80	120 - -	120	781 1 10	461 1 10	228 4 6	120 - -	120	929 6 4
Captain or Surgeon - -	306 11 4	50	90 - -	75	521 11 4	306 11 4	91 5 -	90 - -	75	563 - 4
Lieutenant or Assistant Surgeon.	194 6 -	30	60 - -	50	334 6 -	194 6 -	60 14 -	60 - -	50	365 4 -
Under 3 years' service.	182 4 5	30	47 13 3	50	310 1 8	182 4 5	60 14 -	47 13 3	50	340 15 8
Veterinary Surgeon Above - ditto -	206 10 -	30	47 13 3	50	334 7 3	206 10 -	60 14 -	47 13 3	50	365 5 3
Above 10 ditto -	230 15 6	30	47 13 3	50	358 12 9	230 15 6	60 14 -	47 13 3	50	389 10 9
Above 20 ditto -	267 8 -	30	47 13 3	50	395 5 3	267 8 -	60 14 -	47 13 3	50	426 3 3
Cornet - - -	154 15 10	25	60 - -	50	289 15 10	154 15 10	45 10 6	60 - -	50	310 10 4

No. 2.—TABLE of PAY proper of EUROPEAN COMMISSIONED OFFICERS of HER MAJESTY'S and HONOURABLE COMPANY'S SERVICE, converted into Indian Currency at 2s. 0½d. per Company's Rupee, and admissible when not in receipt of Indian or Staff Allowance.

HER MAJESTY'S TROOPS.

[illegible]

HONOURABLE COMPANY'S TROOPS.

HORSE ARTILLERY AND CAVALRY :		For any Month.	Foot Artillery and Engineers—continued.		For any Month.
		Rs. a. p.			Rs. a. p.
Colonel	- - - - -	486 11 9	Captain	- - - - -	171 6 10
Lieutenant Colonel	- - - - -	340 11 5	1st Lieutenant	- - - - -	85 11 5
Major	- - - - -	285 1 7	2nd Lieutenant	- - - - -	73 7 6
Captain	- - - - -	219 10 8			
Lieutenant	- - - - -	134 1 4			
Cornet	- - - - -	119 2 11			
		223 9 11			
Veterinary Surgeon	{ above 20 years' service	178 14 4			
	{ " 10 " " "	149 1 4			
	{ " 3 " " "	119 4 8			
	{ under 3 " " "				
FOOT ARTILLERY AND ENGINEERS :			NATIVE INFANTRY :		
Colonel	- - - - -	372 11 3	Colonel	- - - - -	372 11 3
Lieutenant Colonel	- - - - -	298 2 7	Lieutenant Colonel	- - - - -	298 2 7
Major	- - - - -	223 9 11	Major	- - - - -	223 9 11
			Captain	- - - - -	149 1 4
			Lieutenant	- - - - -	74 8 8
			Ensign	- - - - -	69 9 -
			Surgeon	- - - - -	149 1 4
			Assistant Surgeon	- - - - -	74 8 8

(signed) *W. M. N. Sturt*, Major,  
Officiating Secretary to the Government of India, Military Department.

(True copy.)

**D. J. Welch, Major, R.A.,**  
**Deputy Inspector General of Ordnance and Magazines.**

NOTE 8.

PAY and ALLOWANCES of a REGIMENT of EUROPEAN CAVALRY in India.

Cochrane, p. 319.

RANKS.	Pay and Indian Allowances.	Horse Allowance.	TOTAL.	
	Rs. a. p.	Rs.	Rs. a. p.	
Lieutenant Colonel	1,037 - -	120	1,157 - -	
Majors	809 6 4	120	929 6 4	
Captains	473 - 4	90	563 - 4	
Lieutenants	305 4 -	60	365 4 -	
Cornets	250 10 4	60	310 10 4	
	305 5 2	60	365 5 2	
Riding Master	On appointment at 9 s. a day - After 16 years' appointment at 10 s. 6 d. a day - After 15 years' appointment at 12 s. a day -	323 9 5 60 60	383 9 8 383 9 8 401 13 7	General Order, 19th March 1867, No. 281. If attached to Field Batteries, 80 rupees horse allowance only is claimable.
Paymaster, on appointment	445 13 -	90	535 13 -	
" after 5 years	476 4 -	90	566 4 -	
" after 10 years	506 11 -	90	596 11 -	
" after 15 years	537 2 -	90	627 2 -	
" after 20 years	567 9 -	90	657 9 -	
	On Appointment, 8 s. 6 d. a day.	After 10 Years' Service 10 s. 6 d. a day.	After 15 Years' Service 12 s. a day.	
	Rs. a. p.	Rs. a. p.	Rs. a. p.	
Quartermaster, English pay	103 7 10	127 13 5	146 1 7	General Order, 27th July 1864, No. 615.
" Half batta	60 14 -	60 14 -	60 14 -	
" Gratuity	24 - -	24 - -	24 - -	
" Tentage	50 - -	50 - -	50 - -	
" Extra batta	60 14 -	60 14 -	60 14 -	
" Horse allowance	60 - -	60 - -	60 - -	
" Office allowance	55 - -	55 - -	55 - -	
" Office rent	30 - -	30 - -	30 - -	
TOTAL	444 3 10	468 9 5	486 13 7	

Rupees per Month.

Adjutant	- - - - -	- - - - -	* 207 7 -
Paymaster	- - - - -	- - - - -	† 65 5 4
Interpreter	- - - - -	- - - - -	‡ 100 - -

Riding Master, 7 l. per troop per annum, or for seven troops, 40 rupees per mensem.

* Staff pay	- - - - -	Rs. 92 7 -	‡ Staff pay	- - - - -	Rs. 60
Office Allowance	- - - - -	‡ 55 - -	Moonshee	- - - - -	- 30
Horse Allowance	- - - - -	30 - -	Stationery	- - - - -	- 10
Office Tent	- - - - -	‡ 30 - -			
† Office Allowance.					Rs. 100

[General Order, 3rd August 1866, No. 755.]

§ In Bengal the office allowances drawn are 90 rupees, making Rs 212. 7.

[General Order, No. 395, of 1853.]

PAY and ALLOWANCES of a BRIGADE of FOOT ARTILLERY in India.

Cochrane, p. 322.

RANKS.	Pay and Indian Allowances.	Horse Allowance.	TOTAL.
	Rs. a. p.	Rs. a. p.	Rs. a. p.
Colonel Commandant at Home	- - - - -	- - - - -	- - - - -
Colonel	1,265 5 -	30 - -	1,295 5 -
Lieutenant Colonel	1,002 4 -	30 - -	1,032 4 -
Lieutenant Colonel on Major's Pay	769 3 -	30 - -	799 3 -
Captains	433 10 -	- - -	433 10 -
Second Captains	417 7 8	- - -	417 7 8
Lieutenants on Superior Pay	265 12 -	- - -	265 12 -
Lieutenants on inferior Pay	213 5 -	- - -	213 5 -

Appendix, No. 2.

Cochrane, p. 324.

**PAY and ALLOWANCES of a REGIMENT or BATTALION of EUROPEAN INFANTRY  
in India.**

RANKS.	Pay, and Indian Allowances.	Horse Allowance.	TOTAL.
	<i>Rs. a. p.</i>	<i>Rs.</i>	<i>Rs. a. p.</i>
Lieutenant Colonel - - - - -	1,002 4 -	30	1,032 4 -
Majors - - - - -	759 3 -	30	789 3 -
Captains - - - - -	415 6 -	- - -	415 6 -
Lieutenants - - - - -	256 10 -	- - -	256 10 -
Ensigns - - - - -	202 12 5	- - -	202 12 5
Paymaster, on appointment - - - - -	445 13 -	- - -	445 13 -
" after 5 years - - - - -	476 4 -	- - -	476 4 -
" after 10 years - - - - -	506 11 -	- - -	506 11 -
" after 15 years - - - - -	537 2 -	- - -	537 2 -
" after 20 years - - - - -	567 9 -	- - -	567 9 -
Quartermaster, on appointment - - - - -	247 14 3	- - -	247 14 3
" after 10 years - - - - -	299 3 9	- - -	299 3 9
" after 15 years - - - - -	317 8 -	- - -	317 8 -

STAFF.	Rupees per Month.
Adjutant - - - - -	* 237 - -
Paymaster - - - - -	† 78 10 8
Quartermaster - - - - -	‡ 85 - -
Instructors of Musketry - - - - -	\$ 150 - -
Interpreter - - - - -	100 - -

[General Order, 3 August 1865, No. 755.]

	<i>Rs.</i>	<i>Rs.</i>		<i>Rs.</i>
* Staff pay - - - - -	123	Bengal, 75	§ Includes horse allowance,	
Office allowance - - - - -	55		Staff salary - - - - -	60
Horse allowance - - - - -	30		Moonshee - - - - -	30
Office tentage - - - - -	30		Stationery - - - - -	10
	<u>Rs. 237</u>	Bengal, 257		<u>Rs. 100</u>
† Office allowance - - - - -	-			
‡ Office allowance - - - - -	55			
Office tent - - - - -	30			
	<u>Rs. 85</u>			

Cochrane, p. 326.

**PAY, irrespective of ALLOWANCES.**

ROYAL ARTILLERY and ENGINEERS.	Cavalry.	Infantry.
	<i>Rs. a. p.</i>	<i>Rs. a. p.</i>
Colonel - - - - -	482 - 6	391 5 5
Lieutenant Colonel - - - - -	403 12 2	269 9 5
Lieutenant Colonel on Major's pay - - - - -	341 10 3	- - -
" " of Foot Artillery - - - - -	- - -	252 3 1
" " of Engineers - - - - -	- - -	239 12 4
Captain and Second Captain - - - - -	239 12 4	- - -
Captain of Foot Artillery - - - - -	- - -	181 6 -
Captain and Second Captain of Engineers - - - - -	- - -	165 3 9
Second Captain of Foot Artillery - - - - -	- - -	165 3 9
First Lieutenant, above 7 years - - - - -	161 8 -	116 12 4
" " under 7 years - - - - -	146 9 6	101 13 11
" " on Second Lieutenant's pay - - - - -	- - -	83 3 9

## Appendix, No. 3.

GENERAL ORDER by His Royal Highness the Field Marshal Commanding in Chief,  
1st December 1871.

App. No. 3.

## G. O. 94.—FIELD MANŒUVRES.

THE following instructions relative to the employment of Horse and Field Artillery will be carried out in subsequent manœuvres.

I. General officers commanding divisions or detached brigades should indicate to the officers commanding artillery under their orders the general object of the movements about to be executed, and these officers will give directions to the captains of batteries as to the best mode of co-operating with and supporting them.

II. Officers commanding batteries should be permitted (under the direction of their own commanding officers) to use their own judgment in selecting the best positions to enable them to operate with advantage either in covering an attack or retreat, conforming, of course, as much as the nature of the ground will permit, with the movements of the corps to which they are attached.

III. Any special directions received by the officer commanding artillery, from the general or other officer in command of troops, relative to any change in the disposition of the batteries during the movements, will of course be promptly carried out.

IV. No battery ought to be exposed to the risks of infantry fire, unless under unavoidable circumstances, which occasionally occur in action.

PRÉCIS of CORRESPONDENCE regarding Claim to Major's Pay, by Lieutenant Colonel  
*Purvis*, Royal Artillery.

## LETTERS.

1. Karachi, 14 November 1872, to Assistant Adjutant General, Royal Artillery, Bombay Army, forwarding Petition to His Excellency the Commander in Chief, Bombay, praying for redress of wrongs arising from non-receipts of Major's Pay.

2. Letter, dated Kurrachee, 12 May 1873, to Brigade Major, Kurrachee, praying for pay of rank.

3. Letter, dated Kurrachee, 15 August 1873, to Officer commanding Royal Artillery in Sind, begs to be informed of result of reference named in reply (No. 2) above.

4. Letter, dated Kurrachee, 6th December 1873, to Brigade Major, Sind District, soliciting that original letter (12 May 1873) be forwarded to Field Marshal Commanding in Chief, or that Major Purvis be informed of the decision of Indian Government.

5. Letter, dated Hyderabad, 25 April 1874, requesting reply to former correspondence.

## REPLIES.

1. Letter, or Memorandum, from Assistant Acting General, Royal Artillery, Bombay, saying that the request should be made in form of a letter, not in that of a petition.

2. Letter from Officiating Assistant Adjutant General, Royal Artillery, Bombay, dated Head Quarters, Mahableshwar, 31 May 1873, states that question of Major's Pay is now before the Government of India, and believes it has been referred to the Secretary of State for India. Major Purvis's case not to be submitted till result known.

3. Memorandum from Brigade Major, Sind District, dated 28 August 1873, that the Brigadier General considers it premature to prefer the application, &c.

4. Reply from Brigade Major, Sind, that appeal had been forwarded to the Commander in Chief in India.

5. Reply from Brigade Major, Sind District, dated 30 April 1874; the Brigadier does not consider it expedient to submit this letter.



App. No. 3.

## LETTERS.

6. Letter, in June 1874, from Kurrachee, to Officer commanding Royal Artillery in Sind, pressing claim.

7. Letter, dated Dublin, 2 June 1875, to Deputy Adjutant General, Royal Artillery, War Office, detailing wrongs, and begging they may be laid before His Royal Highness the Commander in Chief.

8. Letter, dated Dublin, 30 June 1875, to Officer commanding Royal Artillery, Dublin, District, begging for reply to (No. 7) above.

9. Letter, 28 September 1875, dated London (forwarding copy of letter from Deputy Adjutant General, Royal Artillery, in India, 11 August 1875), to Deputy Adjutant General, Royal Artillery, Horse Guards, begging to be informed of His Royal Highness' decision.

10. Letter, dated 22 June 1876, to Officer commanding 8th Brigade, Royal Artillery, detailing grievance, begging leave to petition the Queen.

11. Letter, dated 17 October 1876, to Colonel commanding 8th Brigade, Royal Artillery, begs again for leave to petition the Queen.

## REPLIES.

6. Reply from Brigade Major, Sind District, that matter was under consideration.

7. None.

8. Horse Guards, 2 July 1875. Appeal forwarded to Secretary of State for India; no reply yet received. Signed by Deputy Adjutant General, Royal Artillery.

9. War Office, 29 September 1875, from Assistant Adjutant General, Royal Artillery, states "matter still subject of correspondence with India Office."

Letter of 15 September 1875, from Deputy Adjutant General, Royal Artillery, in India, says, petition forwarded to Government for transmission to Secretary of State for India.

10. Memorandum, 24 July 1876, from Deputy Adjutant General, Royal Artillery, in India, informs that petition has been forwarded to Government for consideration.

## Also

Memorandum, 18 September 1876, from same office, informs that a reference was made to Secretary of State for India on 21 August 1876 relative to petition.

11. Letter, dated 24 October 1876, from Deputy Adjutant General, Royal Artillery, in India, informs, petitions forwarded first to Government of India; forwarding letter drawing attention that leave was solicited to petition the Queen; another forwarding letter that a second application had been received to petition the Queen.

## Also

Deputy Adjutant General, Royal Artillery, in India, memorandum 6 December 1876, informs that copy of petition has been forwarded to Secretary of State for India.

## Memorandum, 21 July 1876.

Deputy Adjutant General, Royal Artillery, in India, informs that Secretary of State for India declares matter will be submitted to Parliament in due course.

(signed)

H. M. G. Purvis, Lieutenant Colonel,  
8th Brigade, Royal Artillery.

Meerut, 12 December 1876.

(True copy.)

Meerut, 21 January 1876.

(No. 110.)

## MEMORANDUM.

## Royal Artillery in India—Pay and Allowances.

Deputy Adjutant General's Office, Royal Artillery,  
Simla, 18 January 1877.

WITH reference to his letter, No. 129, dated 14 December 1876, the Officer commanding 8th Brigade, Royal Artillery, is informed that the further petition of Lieutenant Colonel H. M. G. Purvis, regarding his Indian pay and allowances as a Major of Royal Artillery, prior to the 1st of April 1875, forwarded therewith, was transmitted to Government for consideration on the 10th instant.

By Order,

(signed) C. G. Arbuthnot, Colonel,  
Deputy Adjutant General, Royal Artillery, in India.

The Officer commanding  
8th Brigade, Royal Artillery, Meerut.

(No. 43.)

8th Brigade, Royal Artillery, Meerut,  
20 January 1877.

Lieutenant Colonel Purvis.

For your information.

By Order,

(signed) S. Gardiner, Captain,  
Adjutant, 8th Brigade, Royal Artillery.

Passed,  
(signed) H. M. G. Purvis,  
21 January 1877.

## Appendix, No. 4.

PAPERS put in by the *Chairman*.

EXTRACT from GENERAL ORDER, dated 21st July 1804.

Appendix, No. 4.

HIS MAJESTY has been also graciously pleased to order that the rank of captain lieutenant in the Royal Artillery shall cease, and that the officers holding commissions of captain lieutenant shall receive commissions as captains, with the usual pay of 10 s.; but that, as a necessary regimental distinction from captains of companies, they shall be termed second captains in the Artillery.

EXTRACT from GENERAL ORDER.—Deputy Adjutant General's Office, Woolwich,  
3rd April 1855.

3. THE Lieutenant General of the Ordnance has received Her Majesty's pleasure for discontinuing the rank of second lieutenant in the Royal Regiment of Artillery, therefore all gentlemen cadets hereafter receiving commissions will be gazetted as lieutenants; but this is not to carry with it any increase of pay. Two-thirds of the lieutenants on the establishment of the battalions will receive the pay of first lieutenants, and the remainder the present pay of second lieutenants, until they rise in consequence of casualties to within the first division, which will be notified from time to time in General Orders.

## Appendix, No. 5.

PAPERS handed in by Mr. Milton.

Appendix, No. 5.

## ARMY CIRCULAR.

No. 7.—1867.

War Office, 1 August 1867.

THE following Royal Warrant, Regulations, and Instructions are promulgated to the Army by direction of the Secretary of State for War, in accordance with the arrangements detailed in Army Circular No. 1 :—

CONSOLIDATED ALLOWANCES, *Ceylon* and the *Straits Settlements*.

1. Officers serving in *Ceylon* or at the *Straits Settlements* will receive the ordinary pay of their rank, and a consolidated allowance in lieu of rations of provisions, fuel and light, allowance for servants, travelling within 10 miles of the place where they are stationed, and extra allowance to cover special expenses of the command.

2. In addition to the above, officers will either be accommodated in public quarters, or receive lodging-money, and, with the exception of the General Officer Commanding, will be granted an addition of 2 s. 8 d. a day, in lieu of forage and grooms, for each horse they may be entitled to keep by Warrant or special authority.

3. The undermentioned rates will be granted to officers according to their relative rank, as set forth in Her Majesty's Warrant of 3rd February 1866. Brevet rank will in no case be recognised, except as provided for in Article 7.

## STAFF and REGIMENTAL, except Royal Engineers.

RANK OR CLASS.	Consolidated Allowances.		Lodging Money.	
	Monthly.	Daily.	Monthly.	Daily.
	£. s. d.	s. d.	£. s. d.	s. d.
3. Major General - - -	*100 - -	- -	House.	—
5. Colonel - - - - -	27 - -	18 -	8 - -	6 4
6. Lieutenant Colonel - - -				
7. Major - - - - -	22 - -	14 8	7 - -	4 8
8. Captain - - - - -	17 - -	11 4	6 - -	4 -
9. Lieutenant - - - - -	12 - -	8 -	5 - -	3 4
10. Ensign - - - - -	10 - -	6 8	5 - -	3 4

\* Inclusive of Forage and all other Allowances except Travelling.

Broken periods will be reckoned at the daily rates.

4. An additional allowance of 3 s. a-day will be granted to the Commanding Officer of each Regiment or Corps, and to the heads of the Adjutant General's, Quartermaster General's, Commissariat, Medical, Purveyors, Military Store, and Barrack Departments; also to the Commandants at Colombo, Galle, Trincomalee, Kandy, and the Straits, if not in receipt of it in any other capacity.

5. Officers of Royal Engineers who are in receipt of servants' allowance and of extra pay, which includes allowances for lodgings, fuel, light, and travelling within five miles of their stations, will be allowed 2 s. 8 d. a-day, in lieu of forage and grooms, for each horse they may be entitled to keep; and, in addition, the following rates in lieu of rations of provisions, and extra allowance:—

	£.	s.	d.	s.	d.
Colonel	-	-	-	-	-
Lieutenant Colonel	-	-	-	-	-
Captain	-	-	-	-	-
Subaltern	-	-	-	-	-

6. If, in consequence of the death or temporary absence of an officer from the command, an officer of inferior rank succeed to the command of a regiment or corps, or to the charge of a department, he will receive the allowances of the rank next above his own. A captain of Royal Artillery, so situated, should the Artillery command hereafter be made that of a lieutenant colonel, will receive the allowances of a major, although the corps does not contain that regimental rank. A captain of Royal Engineers in like circumstances will receive consolidated allowance at the rate of 17 l. a month, or 11 s. 4 d. a day.

7. Brevet officers will be granted allowances according to their regimental rank, unless actually in performance of higher duties than those which attach to their regimental commissions; but the higher rate will in no case be allowed unless the superior duties have been performed for a period exceeding one month.

8. An officer's allowances will commence on the day of his arrival in the command, as notified in General Orders, and will cease on the day he leaves it.

9. Officers on promotion will receive the allowances of their new rank from the date of the General Order notifying the promotion.

10. Officers of Royal Engineers, when accommodated in public quarters, will pay stoppages at the following rates:—

	£.	s.	d.
Field Officer	-	-	-
Captain	-	-	-
Subaltern	-	-	-

11. All claims for lodging-money will be supported by the usual certificates that the officer actually provided himself with lodgings, and was not, and could not be, accommodated in any building belonging to or hired by the public.

12. Claims for forage allowance will be supported by certificates, showing the number of horses which have been actually kept.

13. Officers drawing these allowances are not entitled to soldier servants, and they will, therefore, furnish certificates that they had not the services of any soldier or other person paid by the public. In any case in which an officer may be allowed a soldier servant under competent authority, a deduction of 1 s. a day will be made from his consolidated allowance in respect of every such soldier servant.

(signed) Longford.

## Appendix, No. 5.

**RETURN of BRITISH PAY and COLONIAL ALLOWANCES at Hong Kong, the Straits Settlements, and Ceylon, of a late FIRST CAPTAIN and MAJOR of ARTILLERY, and a late FIRST CAPTAIN and MAJOR of ENGINEERS.**

	Pay and Command Pay.	Extra Pay and Servant's Allowance.	Consolidated Allowance.	
<b>HONG KONG:</b>	<i>s. d.</i>	<i>s. d.</i>	<i>s. d.</i>	
Major, R.A. - - - - -	14 0 1 6	- -	15 -	
Late First Captain, R.A. - -	12 1	- -	11 -	
Major, R.E. - - - - -	15 -	15 - *3 -	11 6	* If not mounted, 1 s. 6 d.
Late First Captain, R.E. - -	11 -	11 - 1 6	8 -	
<b>STRAITS SETTLEMENTS AND CEYLON:</b>				
Major, R.A. - - - - -	14 6 1 6	- -	14 8	
Late First Captain, R.A. - -	12 1	- -	11 4	
Major, R.E. - - - - -	15 -	15 - *3 -	11 4	* If not mounted, 1 s. 6 d.
Late First Captain, R.E. - -	11 -	11 - 1 6	9 4	

*N.B.*—A major of horse artillery would draw pay at 18 s. instead of 14 s. 6 d., and a late first captain of horse artillery would have drawn pay at 15 s. 11 d. instead of 12 s. 1 d.; but there has never been any horse artillery at these stations.

The consolidated allowance at Ceylon and the Straits Settlements is in lieu of rations of provisions, fuel and light, allowance for servants travelling within 10 miles of the place where stationed, and extra allowances to cover special expenses of the command.

The allowance at Hong Kong also includes a provision for forage.

(signed) *John Milton,*  
Accountant General of the Army.

**RETURN of PAY and ALLOWANCES of a late FIRST CAPTAIN and a MAJOR of ENGINEERS, at Home and Foreign Stations, irrespective of the Colonies.**

	Pay.	Extra Pay and Servant Allowance.	
	<i>s. d.</i>	<i>s. d.</i>	
Major, R.E. - - - - -	15 -	{ 15 - *3 - }	* If not mounted, 1 s. 6 d.
Late First Captain, R.E. - - -	11 -	{ 11 - 1 6 }	

Appendix, No. 6.

PAPERS handed in by the Secretary, Military Department, India Office.

GENERAL ORDER.

Appendix, No. 6.

THE Governor General in Council is pleased to notify that the Staff Salaries laid down in General Order, No. 161 A, dated 29th October 1863, are to be held to include the following sums as horse allowance, which, under the Financial Resolution, No. 8262, of the 2nd July 1861, is exempted from the payment of Income Tax. (See General Order, 7 March 1865, No. 237.)

Cochrane, p. 201, Edit. 1867.

ESTABLISHMENT, &c.

RETURN of STRENGTH of a TROOP of CAVALRY and COMPANY of INFANTRY.

CAVALRY.	INFANTRY.
1 Captain.	1 Captain.
3 Lieutenants.	2 Lieutenants.
1 Troop Serjeant Major.	1 Colour Serjeant.
1 Farrier.	4 Serjeants.
3 Serjeants.	2 Drummers.
1 Trumpeter.	5 Corporals.
4 Corporals.	97 Privates.
64 Privates.	2 Puckallies.
Native Establishment:—	2 Sweepers.
41 Syces.	
72 Grasscutters.	
2 Puckallies.	
2 Sweepers.	

The cost can only be given approximately, as there are no data to show how the additional pay for length of service falls, or the pay of lance serjeants and corporals. It is assumed, therefore, that if the total cost of a regiment of cavalry and infantry be divided by the number of troops and companies, the object of the return will be fulfilled. In this view the cost of a troop of cavalry, British, on the Bengal Establishment is 57,826 rupees yearly; that of a company of infantry is 46,816 rupees.

## Appendix, No. 6.

## CAVALRY.

## DETAIL of the ESTABLISHMENT of One REGIMENT of SIX TROOPS.

RANKS.	Numbers.	Rate of Pay per Mensem.	Total Pay per Mensem.	Total Pay per Annum.
		<i>Rs. a. p.</i>	<i>Rs. a. p.</i>	<i>Rs. a. p.</i>
Colonel - - - - -	-	-	-	-
Lieutenant Colonel - - - - -	1	-	1,037 - -	-
Major - - - - -	1	-	809 6 4	-
Captains - - - - -	6	473 - 4	2,838 2 -	-
Lieutenants and Sub-lieutenants -	12	250 10 4	3,007 12 -	-
Paymaster - - - - -	1	-	445 13 -	-
Adjutant - - - - -	1	-	305 4 -	-
Riding Master - - - - -	1	-	305 5 2	-
Quartermaster - - - - -	1	-	299 3 10	-
Surgeon Major - - - - -	1	-	789 3 -	-
Surgeons - - - - -	2	317 8 -	635 - -	-
Veterinary Surgeon - - - - -	1	-	377 8 -	-
	28			1,30,195 - -
Regimental Serjeant Major - - -	1	-	63 14 10	-
Bandmaster Serjeant - - - - -	1	-	58 9 6	-
Quartermaster Serjeant - - - - -	1	-	50 9 6	-
Troop Serjeant Majors - - - - -	6	50 9 6	303 9 -	-
Serjeant Instructor in Fencing and Gymnastics. - - - - -	1	-	47 14 10	-
Paymaster Serjeant - - - - -	1	-	37 4 2	-
Armourer Serjeant - - - - -	1	-	79 14 10	-
Hospital Serjeant - - - - -	1	-	38 10 8	-
Saddler Serjeant - - - - -	1	-	53 4 2	-
Orderly Room Serjeant - - - - -	1	-	37 4 2	-
Farrier Major - - - - -	1	-	58 9 6	-
Farriers - - - - -	6	39 14 10	239 9 -	-
Trumpet Major - - - - -	1	-	37 4 2	-
Serjeants - - - - -	18	37 4 2	670 11 -	-
Trumpeters - - - - -	6	19 14 10	119 9 -	-
Corporals - - - - -	24	24 9 6	590 4 -	-
Privates - - - - -	384	17 4 2	6,628 - -	-
	455			1,09,378 12 -
TOTAL Number - - - - -	483	And Pay per Annum - <i>Rs.</i>		2,39,573 12 -
Add,—Five Days' Pay of Non-commissioned Officers, Rank and File - -				1,519 2 4
COMMAND, STAFF, AND HORSE ALLOWANCES :				
Regimental Command Allowance - - - - -	-	-	400 - -	-
Troop Allowance - - - - -	-	50 - -	300 - -	-
Adjutant's Allowance - - - - -	-	-	212 7 -	-
Paymaster's Office Allowance - - - - -	-	-	65 5 4	-
Quartermaster's Office Allowance - - - - -	-	-	85 - -	-
Interpreter's Allowance - - - - -	-	-	70 - -	-
Assistant Instructor of Gymnastics - - - - -	-	-	13 - 8	-
Drill Serjeant - - - - -	-	-	14 - -	-
Drill Corporal - - - - -	-	-	7 - -	-
Savings' Bank Clerk - - - - -	-	-	8 - -	-
Pay Serjeants - - - - -	-	7 - -	42 - -	-
Rough Riders - - - - -	-	-	18 10 -	-
Mess Allowance - - - - -	-	-	150 - -	-
Band Allowance - - - - -	-	-	66 10 8	-
Horse Allowance of Officers - - - - -	-	30 - -	1,980 - -	-
				41,185 4 -
EDUCATIONAL ESTABLISHMENT :				
Trained Schoolmaster - - - - -	1	-	62 1 9	-
Staff Allowance to Schoolmaster - - - - -	-	-	18 - -	-
Trained Schoolmistress - - - - -	1	-	30 - -	-
Allowance to Senior School As- sistant. - - - - -	-	-	10 - -	-
Allowance to Junior School As- sistant. - - - - -	-	-	6 - -	-
Moonshee - - - - -	1	-	30 - -	-
Allowance to Librarian - - - - -	-	-	8 - -	-
Allowance for Hindostanee Class - - - - -	-	-	10 - -	-
	3			2,089 5 -
Carried forward - - - <i>Rs.</i>			2,84,367 7 4	

## CAVALRY.—Detail of the Establishment of One Regiment of Six Troops—continued.

RANKS.	Numbers.		Rate of Pay per Mensem.	Total Pay per Mensem.	Total Pay per Annum.
			<i>Rs. a. p.</i>	<i>Rs. a. p.</i>	<i>Rs. a. p.</i>
SUBORDINATE MEDICAL AND FIXED HOSPITAL ESTA- BLISHMENT :			Brought forward - -		2,84,367 7 4
Apothecary - - - -	1		- - -	180 - -	
Assistant Apothecary - - - -	1		- - -	75 - -	
Passed Apprentice - - - -	1		- - -	50 - -	
Hospital Apprentice - - - -	2		20 - -	40 - -	
Hospital Assistant - - - -	1		- - -	20 - -	
Nurse - - - -	1		- - -	15 - -	
Assistant Nurse - - - -	1		- - -	8 - -	
Writer - - - -	-		- - -	10 - -	
Head Compounder - - - -	1		- - -	10 - -	
Assistant Compounder - - - -	1		- - -	8 - -	
Head Dresser - - - -	1		- - -	8 - -	
Assistant Dresser - - - -	1		- - -	6 - -	
Shop Coolies - - - -	2		5 - -	10 - -	
Purveyors' Servants - - - -	2		6 - -	12 - -	
Tailor - - - -	1		- - -	6 - -	
Clothier - - - -	1		- - -	8 - -	
Barber - - - -	1		- - -	6 - -	
Head Cook - - - -	1		- - -	6 - -	
Cooks - - - -	3		5 - -	15 - -	
Head Washerman - - - -	1		- - -	7 - -	
Washermen - - - -	3		5 - -	15 - -	
Peon - - - -	1		- - -	5 - -	
Head Bheestie - - - -	1		- - -	6 - -	
Bheesties - - - -	4		5 - -	20 - -	
Head Sweeper - - - -	1		- - -	6 - -	
Sweepers - - - -	6		4 - -	24 - -	
Head Coolie - - - -	1		- - -	6 - -	
Coolies - - - -	12		4 - -	48 - -	
Female Sweeper - - - -	1		- - -	4 - -	
Mate Bearers - - - -	2		5 - -	10 - -	
Bearers - - - -	6		4 - -	24 - -	
		62			8,016 - -
NATIVE FOLLOWERS :					
Farriers - - - -	6		9 - -	54 - -	
Jamadar Syces - - - -	2		7 - -	14 - -	
Hospital Syces - - - -	2		5 - -	10 - -	
Syces - - - -	250		4 - -	1,000 - -	
Grasscutters - - - -	486		4 - -	1,744 - -	
QUARTERMASTER'S ESTA- BLISHMENT :					
Tindal - - - -	1		- - -	9 8 -	
Lascars - - - -	6		5 12 -	34 8 -	
Puckallies - - - -	12		9 - -	108 - -	
Sweepers - - - -	12		4 - -	48 - -	
Chowdry - - - -	1		- - -	11 - -	
Mutsuddy - - - -	1		- - -	5 - -	
Weighmen - - - -	2		4 - -	8 - -	
CONSERVANCY ESTABLISH- MENT :					
Bheesties - - - -	5		5 - -	25 - -	
Sweepers - - - -	7		4 - -	28 - -	
Bildars - - - -	3		3 8 -	10 8 -	
Filth Carts - - - -	-		15 - -	60 - -	
		746			38,034 - -
CONTRACT ALLOWANCES :					
Allowance for Shoeing Horses - - - -	-		- 12 -	327 - -	
Allowance for Butts and Targets - - - -	-		- - -	4 - -	
Allowance for Petty Stores - - - -	-		- - -	1 8 -	
Riding House Expenses - - - -	-		- - -	34 4 7	
					4,401 7 -
TOTAL for One Regiment per Annum - - -			<i>Rs.</i>		3,34,818 14 4

The actual Cost of a Regiment is - - - *Rs.* 346,961  
The actual Cost of a Troop is - - - 57,827

The Commanding Officer does not act as Quartermaster or Paymaster.

Allen Johnson, Colonel, Military Secretary.



Appendix, No. 6.

## INFANTRY.

## DETAIL of the ESTABLISHMENT of One REGIMENT of EIGHT COMPANIES.

RANKS.	Number.		Rate of Pay per Mensem.	Total Pay per Mensem.	Total Pay per Annum.
			Rs. a. p.	Rs. a. p.	Rs. a. p.
Colonel - - - - -	-		-	-	
Lieutenant Colonel - - - - -	1		-	1,002 4 -	
Majors - - - - -	2		759 3 -	1,518 6 -	
Captains - - - - -	8		415 6 -	3,323 - -	
Lieutenants and Sub-lieutenants - - - - -	16		202 12 5	2,244 6 8	
Paymaster - - - - -	1		-	445 13 -	
Adjutant - - - - -	1		-	266 10 -	
Quartermaster - - - - -	1		-	274 14 3	
Surgeon Major - - - - -	1		-	789 3 -	
Surgeons - - - - -	2		317 8 -	635 - -	
		33			1,37,874 11 -
Serjeant Major - - - - -	1		-	58 9 6	
Bandmaster Serjeant - - - - -	1		-	50 9 6	
Quartermaster Serjeant - - - - -	1		-	42 9 6	
Paymaster Serjeant - - - - -	1		-	31 14 10	
Armourer Serjeant - - - - -	1		-	79 14 10	
Hospital Serjeant - - - - -	1		-	36 - -	
Serjeant Pioneer - - - - -	1		-	31 14 10	
Colour Serjeants - - - - -	8		39 14 10	319 6 8	
Serjeants - - - - -	32		31 14 10	1,021 10 8	
Serjeant Instructor of Musketry - - - - -	1		-	47 14 10	
Orderly Room Serjeant - - - - -	1		-	31 14 10	
Drum Major - - - - -	1		-	31 14 10	
Drummers - - - - -	16		15 14 10	254 13 4	
Corporals - - - - -	40		19 14 10	797 1 4	
Privates - - - - -	780		14 9 6	11,383 2 -	
		886			1,70,633 10 -
TOTAL Number - - - - -		919	And Pay per Annum Rs.		3,08,508 5 -
Add,—Five Days' Pay of Non-commissioned Officers, Rank and File - - -					2,300 14 7
COMMAND, STAFF, AND HORSE ALLOWANCES:					
Regimental Command - - - - -			-	400 - -	
Company Allowance - - - - -			30 - -	240 - -	
Adjutant's Allowance - - - - -			-	267 - -	
Instructor of Musketry, including Horse Allowance. - - - - -			-	150 - -	
Paymasters' Office Allowance - - - - -			-	78 10 8	
Quartermaster's Office Allowance - - - - -			-	85 - -	
Interpreter's Allowance - - - - -			-	70 - -	
Drill Serjeant - - - - -			-	14 - -	
Drill Corporal - - - - -			-	7 - -	
Savings' Bank Clerk - - - - -			-	20 - -	
Pay Serjeants - - - - -			7 - -	56 - -	
Mess Allowance - - - - -			-	150 - -	
Band Allowance - - - - -			-	66 10 8	
Horse Allowance for Field Officers - - - - -			30 - -	90 - -	
					20,212 - -
EDUCATIONAL ESTABLISHMENT:					
Trained Schoolmaster - - - - -	1		-	62 1 9	
Staff Allowance to Schoolmaster - - - - -	-		-	18 - -	
Trained Schoolmistress - - - - -	1		-	30 - -	
Allowance to Senior School Assistant. - - - - -	-		-	10 - -	
Allowance to Junior School Assistant. - - - - -	-		-	6 - -	
Moonshee - - - - -	1		-	30 - -	
Allowance to Librarian - - - - -	-		-	8 - -	
Allowance for Hindostanee Class - - - - -	-		-	10 - -	
		3			2,089 5 -
Carried forward - - Rs.					3,33,179 8 7.

INFANTRY.—Detail of the Establishment of One Regiment of Eight Companies—*cont<sup>d</sup>*. Appendix, No. 6.

RANKS.	Number.	Rate of Pay per Mensem.	Total Pay per Mensem.	Total Pay per Annum.
		<i>Rs. a. p.</i>	<i>Rs. a. p.</i>	<i>Rs. a. p.</i>
<b>SUBORDINATE MEDICAL AND FIXED HOSPITAL ESTABLISHMENT:</b>		Brought forward	- -	3,33,179 8 7
Apothecary - - - -	1	- -	180 - -	
Assistant Apothecary - - - -	1	- -	75 - -	
Passed Apprentice - - - -	1	- -	50 - -	
Hospital Apprentice - - - -	1	- -	20 - -	
Nurse - - - -	1	- -	15 - -	
Assistant Nurse - - - -	1	- -	8 - -	
Writer - - - -	-	- -	10 - -	
Head Compounder - - - -	1	- -	10 - -	
Compounder - - - -	1	- -	8 - -	
Head Dresser - - - -	1	- -	8 - -	
Dresser - - - -	1	- -	6 - -	
Shop Coolies - - - -	2	5 - -	10 - -	
Purveyor's Servants - - - -	2	6 - -	12 - -	
Clothier - - - -	1	- -	8 - -	
Tailors - - - -	2	6 - -	12 - -	
Barber - - - -	1	- -	6 - -	
Head Cook - - - -	1	- -	6 - -	
Cooks - - - -	4	5 - -	20 - -	
Head Washerman - - - -	1	- -	7 - -	
Washermen - - - -	4	5 - -	20 - -	
Peon - - - -	1	- -	5 - -	
Head Bheestie - - - -	1	- -	6 - -	
Bheesties - - - -	6	5 - -	30 - -	
Head Sweeper - - - -	1	- -	6 - -	
Sweepers - - - -	8	4 - -	32 - -	
Head Coolie - - - -	1	- -	6 - -	
Coolies - - - -	20	4 - -	80 - -	
Female Sweeper - - - -	1	- -	4 - -	
Mate Bearers - - - -	2	5 - -	10 - -	
Bearers - - - -	6	4 - -	24 - -	
	75			8,328 - -
<b>NATIVE FOLLOWERS, QUARTER- MASTER'S ESTABLISHMENT:</b>				
Tindal - - - -	1	- -	9 8 -	
Lascars - - - -	8	5 12 -	46 - -	
Puckallies - - - -	16	9 - -	144 - -	
Sweepers - - - -	16	4 - -	64 - -	
Chowdry - - - -	1	- -	11 - -	
Mutsuddy - - - -	1	- -	5 - -	
Flagmen and Weighmen - - - -	2	4 - -	8 - -	
<b>CONSERVANCY ESTABLISH- MENT:</b>				
Bheesties - - - -	5	5 - -	25 - -	
Sweepers - - - -	15	4 - -	60 - -	
Bildars - - - -	4	3 8 -	14 - -	
Filth Carts - - - -	-	15 - -	75 - -	
	69			5,538 - -
<b>CONTRACT ALLOWANCES:</b>				
For Stationery and Repair of Arms - - - -	-	20 - -	160 - -	
Allowance for Butts and Targets - - - -	-	- -	4 - -	
Allowance in lieu of Petty Stores - - - -	-	- -	1 8 -	
				1,986 - -
<b>TOTAL for One Regiment per Annum</b> - - - <i>Rs.</i>				3,49,031 8 7

The actual Cost per Regiment is - - - *Rs.* 374,529  
The actual Cost per Company is - - - 46,816  
Commanding Officer does not act as Quartermaster or Paymaster.

Allen Johnson, Colonel, Military Secretary.

Appendix, No. 6.

## ROYAL HORSE ARTILLERY.

## DETAIL of the ESTABLISHMENT of ONE BATTERY.

R A N K S.	Numbers.		Rate of Pay per Mensem.	Total Pay per Mensem.	Total Pay per Annum.
			<i>Rs. a. p.</i>	<i>Rs. a. p.</i>	<i>Rs. a. p.</i>
Major - - - - -	1		- -	759 6 4	
Captain - - - - -	1		- -	473 - 4	
Lieutenants - - - - -	2		305 4 -	610 8 -	
Lieutenant - - - - -	1		- -	250 10 4	
Surgeon - - - - -	1		- -	317 8 -	
		6			28,932 12 -
Staff Serjeants - - - - -	2		62 9 6	125 3 -	
Serjeants - - - - -	6		47 14 10	287 9 -	
Trumpeters - - - - -	2		30 9 6	61 3 -	
Farrier Serjeant and Carriage Smith	1		- -	54 9 6	
Corporals - - - - -	6		35 14 10	215 9 -	
Bombardiers - - - - -	6		33 4 2	199 9 -	
Shoeing and Carriage Smiths - -	2		38 4 2	66 8 4	
Collar Maker - - - - -	1		- -	30 9 6	
Wheeler - - - - -	1		- -	30 9 6	
Gunners - - - - -	76		19 14 10	1,514 7 4	
Drivers - - - - -	54		18 9 6	1,004 1 -	
		157			48,078 10 -
TOTAL Number - - -		163	And Pay per Annum <i>Rs.</i>		72,011 6 -
Add,—Five Days' Pay for Non-commissioned Officers and Men - - -					598 5 -
COMMAND, STAFF, AND HORSE ALLOWANCES:					
Battery Command Allowance - - - - -			- -	50 - -	
Rough Rider - - - - -			- -	7 8 -	
Hospital Serjeant - - - - -			- -	7 8 -	
Pay Serjeant - - - - -			- -	12 - -	
Assistant Serjeant - - - - -			- -	7 8 -	
Mess Allowances - - - - -			- -	40 - -	
Horse Allowance - - - - -			30 - -	450 - -	
					6,894 - -
EDUCATIONAL ESTABLISHMENT:					
Allowance to Schoolmaster - - - - -			- -	15 - -	
Allowance to Schoolmistress - - - - -			- -	10 - -	
					300 - -
SUBORDINATE MEDICAL AND FIXED HOS- PITAL ESTABLISHMENT:					
Assistant Apothecary - - - - -	1		- -	105 - -	
Hospital Assistant - - - - -	1		- -	20 - -	
Head Compounder - - - - -	1		- -	10 - -	
Head Dresser - - - - -	1		- -	8 - -	
Shop Coolie - - - - -	1		- -	5 - -	
Purveyor's Servant - - - - -	1		- -	6 - -	
Clothier and Tailor - - - - -	1		- -	6 - -	
Cooks - - - - -	2		5 - -	10 - -	
Head Washerman - - - - -	1		- -	7 - -	
Washerman - - - - -	1		- -	5 - -	
Bheesties - - - - -	2		5 - -	10 - -	
Sweeper - - - - -	1		- -	5 - -	
Ditto - - - - -	1		- -	4 - -	
Sirdar Coolie - - - - -	1		- -	6 - -	
Coolies - - - - -	4		4 - -	16 - -	
Peon - - - - -	1		- -	5 - -	
Mate Bearer - - - - -	1		- -	5 - -	
Bearers - - - - -	8		4 - -	12 - -	
		25			2,940 - -
Carried forward - - <i>Rs.</i>					82,743 11 -

ROYAL HORSE ARTILLERY.—Detail of the Establishment of One Battery—*continued*.

Appendix, No. 6.

R A N K S.	Numbers.	Rate of Pay per Mensem.	Total Pay per Mensem.	Total Pay per Annum.
NATIVE ARTIFICERS AND FOLLOWERS:		<i>Rs. a. p.</i>	<i>Rs. a. p.</i>	<i>Rs. a. p.</i>
		Brought forward - -		82,743 11 -
Tindal - - - - -	1	- - -	7 8 -	
Store Lascars - - - - -	12	6 - -	72 - -	
Tent Lascars - - - - -	2	5 12 -	11 8 -	
Puckallies - - - - -	3	9 - -	27 - -	
Bheestie - - - - -	1	- - -	5 - -	
Sweepers - - - - -	3	4 - -	12 - -	
Jemadar Syces - - - - -	3	7 - -	21 - -	
Syces - - - - -	118	4 - -	472 - -	
Grasscutters - - - - -	178	4 - -	712 - -	
Bullock Drivers - - - - -	3	5 - -	15 - -	
Mistry Smith - - - - -	1	- - -	12 - -	
Fireman - - - - -	1	- - -	10 - -	
Fileman - - - - -	1	- - -	8 - -	
Ditto - - - - -	1	- - -	7 - -	
Hammermen - - - - -	2	7 - -	14 - -	
Mistry Carpenter - - - - -	1	- - -	14 - -	
Carpenter - - - - -	1	- - -	10 - -	
Moochie - - - - -	1	- - -	10 - -	
Ditto - - - - -	1	- - -	7 - -	
Mutsuddy - - - - -	1	- - -	5 - -	
Weighman - - - - -	1	- - -	4 - -	
CONSERVANCY ESTABLISHMENT:				
Bheestie - - - - -	1	- - -	5 - -	
Sweepers - - - - -	3	4 - -	12 - -	
Bildars - - - - -	2	3 8 -	7 - -	
Carts - - - - -	-	- - -	30 - -	
		342		18,120 - -
CONTRACT ALLOWANCES:				
Allowance for Stationery and Repair of Arms - - -	-	- - -	55 - -	
Allowance for Shoeing 178 Horses - - -	-	- 12 -	133 8 -	
Allowance for Fuel for repairing Waggon - - -	-	- - -	5 - -	
				2,322 - -
TOTAL for One Battery per Annum - - - <i>Rs.</i>				1,03,185 11 -

Commanding Officer acts as Quartermaster and Paymaster.

*Allen Johnson, Colonel, Military Secretary.*

## ROYAL ARTILLERY.

## DETAIL of the ESTABLISHMENT of ONE BATTERY.

R A N K S.	Numbers.	Rate of Pay per Mensem.	Total Pay per Mensem.	Total Pay per Annum.
		<i>Rs. a. p.</i>	<i>Rs. a. p.</i>	<i>Rs. a. p.</i>
Major - - - - -	1	- - -	709 3 -	
Captain - - - - -	1	- - -	417 7 8	
Lieutenants - - - - -	2	265 12 -	531 8 -	
Lieutenant - - - - -	1	- - -	213 5 -	
Surgeon - - - - -	1	- - -	317 8 -	
		6		26,267 12 -
Staff Serjeants - - - - -	2	59 14 10	119 18 8	
Serjeants - - - - -	6	45 4 2	271 9 -	
Trumpeter - - - - -	1	- - -	30 9 6	
Ditto - - - - -	1	- - -	17 14 10	
Farrier Serjeant and Carriage Smith	1	- - -	51 14 10	
Corporals - - - - -	6	33 4 2	199 9 -	
Bombardiers - - - - -	6	30 9 6	183 9 -	
Shoeing and Carriage Smiths - - -	2	30 9 6	61 3 -	
Collar Maker - - - - -	1	- - -	27 14 10	
Wheeler - - - - -	1	- - -	27 14 10	
Gunners - - - - -	76	17 14 10	1,362 7 4	
Drivers - - - - -	54	17 14 10	968 1 -	
		157		39,970 10 -
TOTAL Number - - -		163	And Pay per Annum - <i>Rs.</i>	66,138 6 -
Add,—Five Days' Pay for Non commissioned Officers and Men - - -				553 12 2
Carried forward - - - <i>Rs.</i>				66,692 2

Appendix, No. 6.

ROYAL ARTILLERY.—Detail of the Establishment of One Battery—*continued.*

R A N K S.	Numbers.	Rate of Pay per Mensem.	Total Pay per Mensem.	Total Pay per Annum.
		<i>Rs. a. p.</i>	<i>Rs. a. p.</i>	<i>Rs. a. p.</i>
COMMAND, STAFF, AND HORSE ALLOWANCES :		Brought forward - -		66,692 2 -
Battery Command Allowance - - - -	-	-	50 - -	
Rough Rider - - - -	-	-	7 8 -	
Hospital Serjeant - - - -	-	-	7 8 -	
Pay Serjeant - - - -	-	-	12 - -	
Assistant Serjeant - - - -	-	-	7 8 -	
Mess Allowance - - - -	-	-	40 - -	
Horse Allowance to Officers - - - -	-	30 - -	240 - -	
EDUCATIONAL ESTABLISHMENT :				4,374 - -
Allowance to Schoolmaster - - - -	-	-	15 - -	
Allowance to Schoolmistress - - - -	-	-	10 - -	
SUBORDINATE MEDICAL AND FIXED HOS- PITAL ESTABLISHMENT :				300 - -
Assistant Apothecary - - - -	1	-	105 - -	
Hospital Assistant - - - -	1	-	20 - -	
Head Compounder - - - -	1	-	10 - -	
Head Dresser - - - -	1	-	8 - -	
Shop Coolie - - - -	1	-	5 - -	
Purveyor's Servant - - - -	1	-	6 - -	
Bheesties - - - -	2	5 - -	10 - -	
Sweeper - - - -	1	-	5 - -	
Ditto - - - -	1	-	4 - -	
Sirdar Coolie - - - -	1	-	6 - -	
Coolies - - - -	4	4 - -	16 - -	
Clothier and Tailor - - - -	1	-	6 - -	
Head Washerman - - - -	1	-	7 - -	
Washerman - - - -	1	-	5 - -	
Peon - - - -	1	-	6 - -	
Cooks - - - -	2	5 - -	10 - -	
Mate Bearer - - - -	1	-	5 - -	
Bearers - - - -	3	4 - -	12 - -	
NATIVE ARTIFICERS AND FOL- LOWERS :		25		2,940 - -
Tindal - - - -	1	-	7 8 -	
Store Lascars - - - -	12	6 - -	72 - -	
Tent Lascars - - - -	2	5 12 -	11 8 -	
Puckallies - - - -	3	9 - -	27 - -	
Bheestie - - - -	1	-	5 - -	
Sweepers - - - -	3	4 - -	12 - -	
Jemadar Syces - - - -	3	7 - -	21 - -	
Syces - - - -	71	4 - -	284 - -	
Grasscutters - - - -	110	4 - -	440 - -	
Bullock Drivers - - - -	3	5 - -	15 - -	
Mistry Smith - - - -	1	-	12 - -	
Fireman - - - -	1	-	10 - -	
Fileman - - - -	1	-	8 - -	
Ditto - - - -	1	-	7 - -	
Hammermen - - - -	2	7 - -	14 - -	
Mistry Carpenter - - - -	1	-	14 - -	
Carpenter - - - -	1	-	10 - -	
Moochie - - - -	1	-	10 - -	
Ditto - - - -	1	-	7 - -	
Mutsuddy - - - -	1	-	5 - -	
Weighman - - - -	1	-	4 - -	
CONSERVANCY ESTABLISHMENT :				
Bheestie - - - -	1	-	5 - -	
Sweepers - - - -	3	4 - -	12 - -	
Bildars - - - -	2	8 8 -	7 - -	
Carts - - - -	-	15 - -	30 - -	
CONTRACT ALLOWANCES :		227		12,600 - -
Allowance for Stationery and Repair of Arms - - - -	-	-	50 - -	
Allowance for 110 Horses - - - -	-	12 -	82 8 -	
Allowance for Fuel for repairing Waggon - - - -	-	-	5 - -	
				1,650 - -
TOTAL for One Battery per Annum - - - Rs.				88,556 2 2

Commanding Officer acts as Quartermaster and Paymaster.

Allen Johnson, Colonel.

## MEMORANDUM. .

THE duties of paymasters and quartermasters of British regiments in India are those laid down in the Queen's Regulations, and differ, it is understood, in no respect, except in degree, from what they are required to perform in Great Britain or the Colonies.

There are no specific manuals or codes laying down these duties for either the British or Indian establishments. A code of instructions for the information and guidance of paymasters of British troops in India has been issued by the Controller of Military Accounts, Calcutta, under authority, and this is forwarded as showing generally the nature of the duties required and the mode of executing them. It is pointed out that the term "paymaster" throughout these instructions applies equally to officers commanding brigades and batteries of Royal Artillery, when officers of the Royal Artillery are concerned.

With respect to the regimental quartermasters there is no such code. His duties may, however, be generally stated to be as follows:—

The quartermaster receives charge of ammunition, clothing, bedding, barrack stores, canteen stores, camp equipage, camp stores, &c. He receives also for issue, rations and forage. He is responsible for the quantity of the foregoing but not for the quality. He has to attend all committees connected with them.

He has to control, muster, and draw pay for the establishments, bazaar, and conservancy; numbering in an infantry regiment 69. He has also to look after generally the punkah pulling, and lighting establishments.

He is responsible, under his commanding officer, for the conservancy of the lines in cantonments and camp.

He has the regular duties of the quartermaster on the line of march, in respect to procuring public and private carriage, procuring supplies, pitching the camp, &c.

He has to receive and make over the barracks and lines, and their stores, furniture, &c.

Financial Department, Fort William, the 2nd July 1861.

## RESOLUTION.

THE Civil Paymaster at Madras having inquired whether he had acted rightly in granting exemption under Section 129 of Act 32, of 1860, to the military officers noted in the margin, who draw consolidated salaries in the Civil Department on a sum equivalent to the tentage of their military rank, the Government of that Presidency decided that the exemption should be allowed under the ruling of the Government of India (dated the 14th September 1860, No. 9242, Calcutta Gazette, page 2429), that "military men in civil employ, whose consolidated salary or whose military pay and civil allowance exceeds a captain's pay, are to be charged on the total after deduction on account of tentage and horse allowance."

It now appears that about the same time, when the above rule was passed, the Acting Military Auditor General of Bombay solicited instructions from the Government of that Presidency "as to what principle should be observed in assessing the emoluments of officers who draw consolidated salaries," noting the following as examples:—

Private Secretary to the Government.  
Military Secretary to the Government.  
Secretary to Government, Military Department.  
Mint Master.  
Assay Master.  
Superintendent, School of Arts.  
Chief Engineer, Department of Public Works.  
Railway Consulting Engineer.  
Conservator of Forests.  
Commissioner of Police.  
Police Magistrates.  
Superintendents of Police.  
Government Agent in Prussia.  
Military Assistant Agent, Ganjam.  
Superintendent, Revenue Survey.  
Zillah and Civil Surgeons.  
Inspector of Schools.

	Rs.	a.	p.
Commander in Chief - - - - -	5,833	5	4
Principal Inspector General, Medical Department - - -	2,500	-	-
Inspector General, Medical Department - - - - -	1,900	-	-
Present Inspector General on the Consolidated Salary of a Member of the late Medical Board - - - - -	2,138	-	-
Deputy Inspector General, Medical Department - - -	1,575	-	-
Military Secretary to the Governor - - - - -	1,000	-	-

## Appendix, No. 6.

The Government of Bombay referred the point to this Government in the Military Department, which furnished in reply copy of a report submitted by the Officiating Military Auditor General of Bengal to the effect that, "in this Presidency income tax has been assessed on consolidated salaries on the following principle:—If, as in the cases "noted in

Appointment.	Salary.	Authorised	
		House Rent	Horse Allowance
		Included in the Consolidated Salary.	
	Rs. a. p.	Rs.	Rs.
*Adjutant General Her Majesty's British Indian Forces.	2,250 - -	120	-
Deputy General Her Majesty's British Indian Forces.	800 - -	-	60
Military Auditor General.	3,333 5 4	120	-
General Officer -	3,333 5 4	Tentage 408	-
Commandant of Irregular Cavalry.	1,000 - -	Tentage of Regular Rank.	30
2nd in Command	500 - -	-	30
†Deputy Inspector of Hospitals.	1,800 - -	-	-
Military Secretary to Governor General.	1,000 - -	-	-

the consolidated salary, exemption shall be allowed for the same under Section 129 of the Act, not otherwise.

"the \*margin any express rate of house rent, tentage, or horse allowance is included in a consolidated salary, such house rent has been exempted from deduction, but no exemption is allowed where no rate is included, as in the cases †marginally specified, of officers who hold other than regimental commissions, and for whom no rate of tentage or house rent is defined as either forming a part or as being issuable in excess of their consolidated salaries."

The Governor General in Council observes that none of the appointments enumerated in the Report of the Officiating Military Auditor General of Bengal are the same as those specified in the letter from the Government of Madras, except the Military Secretaryship to the Governor General, which corresponds with the Military Secretaryship to the Governor of Madras, the whole salary attached to which is rightly subjected to income tax. The principle observed in Bengal shall therefore be acted on in reference to the appointments specified in the letter from the Government of Madras, that is to say, the whole of the consolidated salary in each case shall be subject to income tax. If in any case, however, tentage or horse allowance is expressly included in

*Ordered*, that a copy of the above Resolution be forwarded to the Government of Madras for information and guidance.

*Ordered*, also, that a copy of the Resolution be sent to the Honourable H. B. Harrington to be summarised.

The Military Secretary, Horse Guards, to the Under Secretary of State for India.

(Case of Major *Buckle*.)

Sir,

Horse Guards, War Office, 2 August 1876.

No. 526 H.

REFERRING to Horse Guards' Letter, dated 28th September 1874, with accompanying correspondence, and to India Office reply there, dated 16th October 1874, number as per margin, in the case of Major C. R. Buckle, Royal (late Madras) Artillery, who was placed upon half pay for writing and publishing a most disrespectful letter with regard to the pay and allowances of majors of Royal Artillery in India; I am desired by the Field Marshal Commanding in Chief to submit, for the very favourable consideration of the Right Honourable the Secretary of State for India in Council, whether this officer's case may not now be regarded in a less severe light, with a view to his restoration to the full pay list of the Royal (late Madras) Artillery in the first vacancy for a major which may happen thereon.

Major Buckle admittedly wrote the letter which led to his being placed on the retired list, but he at the time denied in the most emphatic manner that he had anything to do with publishing it in the newspapers, and it is now evident that this was correct, as it has been shown that the letter was sent to the papers by an individual into whose hands it fell without Major Buckle's knowledge or consent.

This officer has now been on half pay for upwards of 18 months, and has been severely punished for his indiscretion in writing the improper letter he did, and His Royal Highness thinks that, perhaps, under all the circumstances of the case, his restoration to the full pay list in the position he occupied thereon when placed upon half pay, might be taken into the favourable consideration of the Marquis of Salisbury.

Lord Napier of Magdala, who brought this officer's conduct in writing the letter before referred to to the notice of His Royal Highness, has expressed the hope that his case may be favourably entertained, as, in his Lordship's opinion, he has suffered much for his indiscretion, and there is every reason to believe that should a favourable view be taken of his case by Lord Salisbury, Major Buckle would, by his future conduct in the service, prove that he merits the consideration held out to him.

The Under Secretary of State  
for India.

I have, &c.  
(signed) A. Horsford.

(No. 464 H.)

Appendix, No. 6.

The Secretary of State for India to the Military Secretary, Horse Guards.

(Case of Major *Buckle*.)

Sir,

India Office, 8 September 1876.

I AM directed by the Secretary of State for India in Council to acknowledge the receipt of your letter of the 2nd August, relative to the case of Major C. R. Buckle, of the Royal (late Madras) Artillery, who was in 1874 placed on half pay, with the concurrence of the Secretary of State for India in Council, for writing and publishing a most disrespectful letter with regard to the pay and allowance of majors of Royal Artillery in India, and submitting for Lord Salisbury's favourable consideration whether this officer's case may not now be regarded in a less severe light with a view to his restoration to the full pay list of the Royal (late Madras) Artillery in the first vacancy which may happen thereon.

2. It appears that this officer has now been on half pay for upwards of 18 months, and has been severely punished for his indiscretion in writing the improper letter he did, and His Royal Highness is disposed to consider favourably the question of his restoration to the full pay list in the position he occupied thereon when placed upon half pay.

3. Lord Salisbury learns from your letter, that Lord Napier, of Magdala, who brought this officer's conduct, in writing the letter before referred to, to the notice of His Royal Highness, has expressed the hope that his case may be favourably entertained, as, in his Lordship's opinion, he has suffered much for his indiscretion, and there is every reason to believe that should a favourable view be taken of the case by Lord Salisbury, Major Buckle would, by his future conduct in the service, prove that he merits the consideration held out to him.

4. In reply, I am desired to state that the Marquis of Salisbury will offer no objection to the course which it is proposed to follow with regard to Major Buckle, and he trusts that the consequences entailed upon him by his indiscretion, and the consideration now shown to him by His Royal Highness, will have a beneficial effect upon that officer's future professional career.

The Military Secretary,  
Horse Guards.

I have, &c.  
(signed) *C. Morley*.

(109—21 VI.)

The Secretary of State for India to the Secretary of State for War.

Sir,

India Office, S.W., 9 January 1871.

I HAVE the honour to enclose, for your information, a copy of a draft Warrant which I propose to transmit for Her Majesty's approval for the formation of a staff corps in each of the Presidencies of India, together with the draft of a Despatch to India, which is explanatory of some of its provisions.

Before taking any steps to obtain the sanction of Her Majesty to this proposal, I would request the favour of your considering the terms and conditions of the Warrant, and of your communicating to me any observations which you may wish to make to me on the conditions therein contained.

The Right Honourable  
The Secretary of State for War,  
&c. &c. &c.

I have, &c.  
(signed) *C. Wood*.

Resolved, by the Secretary of State for India in Council, that if Her Majesty shall be pleased to form staff corps for service in India, the revenues of India shall be charged with the sum necessary to provide the pay, half pay, and pensions of such body of officers, on the scale following:—

PAY.

	Whilst required to remain in India.	Out of India.
	<i>Rs. a. p.</i>	<i>£. s. d.</i>
General Officers - - - - -	1,295 5 - per mensem.	1 5 - per diem.
Brevet Colonel and Lieutenant Colonel - - -	827 14 - "	1 - - "
Major - - - - -	640 14 - "	- 10 - "
Captain - - - - -	374 1 6 "	- 10 6 "
Lieutenant - - - - -	225 12 - "	- 6 6 "

Eventually colonel's allowance will be assigned to a certain proportion of the senior officers of the staff corps.

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## Appendix, No. 8.

## PENSION.

Officers of the staff corps will be allowed to retire on the following scale of pensions provided that not less than half of the required periods of service shall have been passed in the staff corps.

				£.	s.	d.	
After 20 years' service in India	-	-	-	191	12	-	per annum.
" 24	"	"	-	292	-	-	"
" 28	"	"	-	365	-	-	"
" 32	"	"	-	456	5	-	"

Officers of Her Majesty's Indian forces joining the staff corps will be entitled to pensions under the regulations of the Indian Service.

Half pay will be granted at the same rate and on the same conditions as to officers of a similar rank in the army, to officers of the staff corps in England who may not wish to retire, but who are unable to return to India, and to officers removed from the effective list who may not be entitled to retire on the above scale of pension, provided they have served three years in India in the staff corps.

(Confidential.)

## DRAFT WARRANT.

WHEREAS it is expedient to provide a body of officers for our service in India, by whom various offices and appointments hitherto held by officers borne on the strength of the several corps or regiments of our forces in India shall in future be held; and whereas our Secretary of State for India in Council has resolved to charge upon the revenues of India the sum necessary to provide the pay, half pay, and pensions of such body of officers on the scale hereinafter contained, our pleasure is, that a corps be formed in each of the Presidencies of our Indian dominions, to be denominated the Bengal, Madras, and Bombay Staff Corps respectively, to consist of such officers as may be required for such employment, and are selected for such purpose by our Governments in India, with the approbation of our Secretary of State for India in Council.

It is also our will and pleasure that all officers now holding, or who immediately before the commencement of their present unexpired furlough may have held, such appointments, and in future officers belonging to any of our land forces serving in India under the rank of regimental field officer, who shall have served three years with a regiment, of which two shall have been in India, shall be eligible to enter such staff corps; but such officers will not be permanently transferred to the staff corps unless fully qualified, and until they shall have passed such periods of probation as may be determined on for the branch of the Indian service for which they may be selected; officers will receive commissions in the staff corps, on their names being submitted to us by our Secretary of State for India.

It is our further will and pleasure that the promotion and pay of the staff corps shall be regulated as follows:—

I. Ensigns, when permanently transferred to the staff corps, to have the rank of lieutenants; other officers to have the rank which they may hold in their regiments.

II. Promotion in the staff corps to be governed by length of service.

Officers, after 12 years' service, of which four must have been in the staff corps, to become captains.

After 20 years' service, of which six must have been in the staff corps, to become majors.

After 26 years' service, of which eight must have been in the staff corps, to become lieutenant colonels.

Five years' service in the staff corps as lieutenant colonel, to entitle the officer so employed to the brevet rank of colonel.

III. Officers now in staff employment in India, joining the staff corps, on its formation, shall count their previous staff service towards promotion to the following extent:—

One step of rank will be given to every officer whose period of service would qualify him for it, according to the above rules. An interval of two years, at least, must intervene between each succeeding step.

IV. Officers in the staff corps will be eligible for brevet rank in common with the rest of the army.

V. Officers of the staff corps holding military appointments will take military command according to their army rank, but officers whilst holding only civil appointments will not be entitled to assume such command.

VI. Exchange may be allowed between officers of the staff corps, under the substantive rank of field officer, and regimental officers of the same rank, on the recommendation of the Indian Government. Officers of the staff corps exchanging into a regiment, will become the juniors of their regimental rank.

VII. The

Appd. Council,  
8 January 1878.

VII. The power of removing officers from the effective list of the staff corps will be exercised by us through our Secretary of State for India. Appendix, No. 6.

VIII. Officers of the staff corps will receive pay according to the following scale :—

	Whilst required to remain in India.	Out of India.
	<i>Rs. a. p.</i>	<i>£. s. d.</i>
General Officers - - - - -	1,295 5 - per mensem.	1 5 - per diem.
Brevet Colonel and Lieutenant Colonel - - -	827 14 - "	1 - - "
Major - - - - -	640 14 - "	- 16 - "
Captain - - - - -	374 1 - "	- 10 6 "
Lieutenant - - - - -	225 12 - "	- 6 6 "

Every officer when in active employment will also receive, in addition to the above pay, such a sum as will make his total pay and allowances up to the sum assigned by the Government in India, with the approval of the Secretary of State for India in Council, as the consolidated pay of the office which he may hold. Eventually, a certain proportion of the senior officers of the staff corps will receive colonel's allowance.

IX. Officers of the staff corps will be allowed to retire on the following scale of pension, provided that not less than half of the required periods of service shall have been passed in the staff corps :—

SCALE.

After 20 years' service in India - - -	£. s. d.
" 24 " " - - -	191 12 - per annum.
" 28 " " - - -	292 - - "
" 32 " " - - -	365 - - "
" 32 " " - - -	456 5 - "

Officers of Her Majesty's Indian forces joining the staff corps will be entitled to pensions under the Regulations of the Indian service.

X. Officers of the staff corps in England who may not wish to retire, but who are unable to return to India, and officers removed from the effective list who may not be entitled to retire on the above scale of pension, will be placed on a half-pay list, provided they have served three years in India on the staff corps, on the same rate of half-pay and on the same conditions as officers of a similar rank in our army.

XI. It is also our will and pleasure that the Warrant shall be administered and interpreted by our Secretary of State for India in Council, who shall be the sole and standing authority upon the matters therein contained.

(7641—48.)

The Secretary of State for War to the Secretary of State for India.

Sir,

War Office, 14 January 1861.

WITH reference to your letter of the 9th instant, containing proposals for the assimilation and ultimate consolidation of the regiments of Indian artillery with the regular service, I have the honour to inform you that I have communicated with the General Commanding in Chief on the subject, and now transmit copy of the reply which I have received.

You will perceive that His Royal Highness concurs in the whole of the proposals, with the exception of the last, viz., the formation of the whole artillery of the Empire into separate regiments, which, for the reasons given in the letter, is, in His Royal Highness's opinion, highly inexpedient.

I have requested His Royal Highness to take Her Majesty's pleasure on the accession of these battalions to the Royal Artillery.

Sir C. Wood,  
&c. &c. &c.

I have, &c.  
(signed) G. C. Lewis.

My Lord,

Horse Guards, S.W., 12 January 1861.

I beg to acknowledge the receipt of your Despatch, dated 11th January 1861, forwarding for my consideration the copy of a letter from Sir Charles Wood, containing proposals for the assimilation and ultimate consolidation of the Indian regiments of artillery with the regular services.

The whole of the proposals except the last are, in my opinion, unobjectionable, and I shall be very glad to see them speedily carried out.

I have already given much consideration to the subject of the last proposal, viz., the formation

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**Appendix, No. 6.** formation of the whole artillery of the Empire into several separate and distinct regiments, having regimental and not general promotion, and I have come to the conclusion that it is not practicable to make such a division, and that the whole must be constituted as one regiment.

It is true that the present Royal and three Indian regiments might remain four separate regiments of Royal Artillery, but it appears to me highly inexpedient even if separate regiments were formed, to perpetuate exactly the present division of the artillery, and moreover the four regiments differ so much in point of numbers, that much inconvenience would arise. On the other hand, any division or separation of the present Royal or Indian regiments would involve such a disturbance of existing interests, and possibly cause supercessions of seniors by juniors in a purely seniority corps, that I can only consider any scheme of the kind as impracticable.

I am of opinion that the officers of the Indian Artillery who volunteer for the Royal Artillery under the terms proposed by Sir Charles Wood, should have Royal Artillery commission issued, bearing the same date as their present commission. This would obviate any possible inconvenience that might arise from their serving with batteries composed entirely of men enlisted for the Royal regiment of artillery.

The Indian artillery officers who volunteer for the Royal Artillery will, I presume, carry with them the same rights to pension in and out of India as proposed by Sir Charles Wood, in another Despatch, for officers of the cavalry and infantry of the Indian army who volunteer for the line, but it seems desirable that this should be clearly made known to them, whenever the option of volunteering is given.

The proposal for the transfer to the Royal Artillery of those men of the Indian Artillery who volunteer for the former seems unobjectionable, as also the proposed formation of local batteries composed of those men who will not volunteer, and which will gradually die out; but I hope it will be distinctly explained to the men beforehand, that the bounty they are to receive upon volunteering is the usual transfer bounty given in the line, and not the bounty given to recruits upon enlistment.

I should be glad, as soon as convenient, to know from Sir Charles Wood what are the details of horse, field, and garrison artillery of which the 14 brigades formed from the Indian artillery are to be composed, and it is also desirable to settle the details of non-commissioned officers and men for each battery in India, but the present proposals can be carried out, as soon as Sir Charles Wood thinks fit, and without waiting for the settlement of these last matters of details, which will be always open to revision.

The Right Hon.  
The Secretary of State for War.

I am, &c.  
(signed) *George.*

(No. 112—24 W.)

The Secretary of State for India to the Secretary of State for War.

Sir,

India Office, 9 January 1861.

I HAVE the honour to bring under your consideration the following proposals for the assimilation and ultimate consolidation of the Indian regiments of artillery with those of the British service, which we based on the recommendations in the Report of the Committee, lately convened under the presidency of Lord Hotham, and which appears to me well calculated to effect the desired object without interference with the course of promotion in either service.

I. That the existing regiments of artillery in the three Presidencies of India shall remain distinct from each other, and from the Royal Artillery, so long as any of the officers now in them shall continue to be borne on their rolls.

II. That no new appointments shall be made to the three Indian regiments.

III. That on the occurrence of vacancies in any of the three Indian regiments or in the Royal Artillery, appointments of young officers should be made to the Royal Artillery.

IV. That after all the subalterns in any of the Indian regiments of artillery have been promoted on the occurrence of the next vacancy in the grade of second captain in that corps, the senior subaltern of the Royal Artillery should be promoted to that grade.

V. That the same process should be followed in each grade successively until all the Indian regiments of artillery have disappeared, after which all the corps will be Royal Artillery.

VI. That in order to carry out this measure to the full extent, the organisation of Indian regiments of artillery will be assimilated to that of the Royal Artillery, the Bengal Artillery will be formed into seven brigades, the Madras Artillery into four brigades, and the Bombay Artillery into three brigades, in all 14 brigades, with the strength of officers detailed in the margin, which is believed to be the establishment of a brigade of Royal Artillery.

I have lately had under consideration the best mode of keeping up in efficiency the strength of batteries and companies of artillery required for service in India.

The

1 Colonel Com-  
mandant.  
2 Colonels.  
4 Lieut. Colonels.  
8 Captains.  
9 Second Captains.  
24 Lieutenants.

The number of men of the local artillery was much reduced under the operation of the General Order of 20th June 1859, which offered the option of discharge to all soldiers of the late East India Company's Service.

At Bombay the establishment of European artillery has been subsequently recruited to very nearly its proper complement, but in Bengal and Madras the numbers are still much below the establishment. The enlistment of recruits for local service to complete the establishment is prohibited by the late Act of Parliament, and it is understood that there are legal objections to filling up the vacancies with men enlisted for the Royal Artillery. Under the circumstances it appears advisable to separate at once the men of the local artillery, who are willing to transfer their services absolutely to the Royal regiments of artillery, from those who may prefer the conditions of local service. To the former, I propose to offer the usual bounty on their transfer to the Royal Artillery, and I would form the volunteers who may accept these conditions into new troops or batteries of Royal Artillery.

I propose to provide officers for these batteries from the officers of the Bengal, Madras, and Bombay Artillery respectively.

Each of these officers now holds a commission in his own corps, and also a concurrent commission in the Queen's name given by the Commander in Chief in India. And it is assumed that the commission which they now hold will enable them to exercise all the powers, and perform all the duties which Royal Artillery officers, if posted to such batteries, could exercise or perform. Or if not that commissions in the Royal Artillery might be given to them, bearing the same dates as their own commissions in the Indian army.

In either case the officers would rise by seniority in the regiments to which they respectively belong, and could not be removed from India except with their own consent.

If willing, and permitted to serve out of India, they would receive pay on the ordinary scale of the Royal Artillery.

The soldiers of the Indian artillery, who may decline to accept the offer, would be formed into batteries, which would remain under their original designation and conditions; and as the numbers of the men diminished by casualties, or by completion of their period of service, they would be consolidated into a smaller number of batteries, and would finally disappear.

It will not in any case be necessary to give commissions in the Royal Artillery to officers who remain in the local troops and batteries, so long as they may exist.

The above plan is framed on the basis of consolidating the Bengal, Madras, and Bombay Artillery into one regiment with the Royal Artillery. I would, however, suggest for your consideration whether it might not be preferable to divide the very large body which would be formed by the united artillery into distinct regiments, with separate regimental and not general promotion.

If such a plan should be entertained, it might be most convenient if the present opportunity were taken for doing so, when the Bengal, Madras, and Bombay Artillery would afford the basis of three regiments.

The Secretary of State for War.

I am &c.  
(signed) C. Wood.

(113—25 W.)

The Secretary of State for India to the Secretary of State for War.

Sir,

India Office, 9 January 1861.

IN continuation of my letter of this date, on the subject of the assimilation of the Indian regiments of Artillery with that of the Royal Artillery, I beg to request your consideration of the following plan, in accordance with the recommendation of Lord Hotham's Committee, for the assimilation of the regiments of Bengal, Madras, and Bombay Engineers, with that of the Royal Engineers.

Appd. Council,  
8 January 1861.

In the case of these regiments it will be necessary to deal with the officers only, as there are no engineer soldiers in India under that designation, and the regiments of native Sappers and Miners must continue, as at present, on the footing of local corps, leaving the requisite complement of commissioned and non-commissioned officers appointed to do duty with them.

The process by which the local regiments of Engineers will die out, and their places be filled by officers appointed to the Royal Engineers, is precisely similar to that proposed for the Artillery.

All fresh appointments would be made to the Royal Engineers, and when all the subalterns of any of the three Indian regiments have become captains, the next vacancy in that regiment will cause the promotion of the senior subaltern of Royal Engineers, and the same process would be followed in the higher grades until all the local officers have disappeared.

The ultimate effect of this measure would be to add seven brigades of officers to the Royal Engineers, of which three would take the place of the Bengal regiment, and two each would be in substitution for those of Madras and Bombay.

It is very desirable to continue the practice of posting a large number of European non-commissioned officers to the native companies of Sappers and Miners. These men have hitherto been obtained by selection from the men enlisted for Artillery and Infantry, and have been liable to be remanded to their regiments on misbehaviour.

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Appendix, No. 6. The men so selected have undergone a special course of training at Chatham, and after serving in India with the Sappers and Miners, and acquiring some knowledge of the native language, a portion of them who were able to pass the requisite examination were appointed overseers in the Public Works Department. It is believed that for this purpose, and for the maintenance of a proper number of European non-commissioned officers with the native Sappers, not less than 300 men per annum would be required, and it is for the consideration of the Secretary of State for War whether this number of men could be more conveniently obtained from the Royal Engineers, or by volunteers from line regiments, who would receive their special training in India. In any case it is desirable to retain the power of remanding to regimental duty the men who may be selected for employment in the Public Works Department.

In proposing these measures for your consideration, I would request your attention to the remarks of Lord Hotham's committee, and to the previous correspondence with your office, in regard to the difficulties which have arisen in the employment of officers of Royal Engineers in the Public Works Department of India.

The present proposal to add seven brigades to the establishment of Royal Engineers, in order ultimately to provide officers of that corps for service in India, can only be entertained on the clear understanding that the officers so provided will be prepared to undertake all the duties, whether civil or military, which are now performed by the Indian regiments of Engineers.

The Right Honourable  
the Secretary of State for War.

I have, &c.  
(signed) *Charles Wood.*

(No. 114—26 W.)

The Secretary of State for India to the Secretary of State for War.

Sir,

India Office, 9 January 1861.

IN my separate letter of this date I have had the honour to bring under your consideration the details of the measures which I propose for ultimately carrying into effect the incorporation of certain of the European regiments of Her Majesty's Indian forces, including the Artillery and Engineers, with those of the British Army.

I have to request that you will take such steps as you may think proper for ascertaining the opinion of His Royal Highness the General Commanding in Chief on these proposals, and if you should concur in them, that you will take Her Majesty's pleasure in regard to the suggested augmentation of Her forces, and should Her Majesty be graciously pleased to approve of the same, that you will make the necessary communication to the General Commanding in Chief, with a view to the preparation of such instructions as His Royal Highness may deem proper for the guidance of the Commander in Chief in India, in the formation of the new regiments, and in carrying out the necessary arrangements in regard to the Artillery.

The Secretary of State for War.

I have, &c.  
(signed) *C. Wood.*

His Royal Highness the Commander in Chief to the Secretary of State for War.

My Lord,

Horse Guards, S.W., 12 January 1861.

I HAVE the honour to acknowledge the receipt of your letter of yesterday's date, forwarding, for my opinion, a letter from the Secretary of State for India, together with the draft of a proposed Warrant for the formation of a staff corps in each of the Presidencies of India, and draft of a Despatch to the Governor General in explanation thereof.

As you are aware, I have already carefully considered all the proposed details of the staff corps, in the propriety of the whole of which I fully concur, and it only remains for me to express my conviction that the staff corps will provide a body of qualified officers amply sufficient to fill the various appointments now supplied from the army in India.

By the scheme which is now proposed, all officers upon taking staff or detached employment in India will have an assured career before them, such as is open to the officers of no other army in the world, with prospects which nothing can destroy but their own negligence and misbehaviour; and while I believe the public interests will profit by this change in the staff system of India, the whole of the military forces of the Crown will benefit by the opening which the staff corps will present to the intelligent and working officer.

The Right Hon.  
The Secretary of State for War.

I am, &c.  
(signed) *George.*

The Secretary of State for War to the Secretary of State for India.

Sir,

War Office, 14 January 1861.

WITH reference to your letter of the 9th instant, forwarding a copy of draft Warrant for the formation of a staff corps in each of the Presidencies of India, and draft Despatch to the Governor General of India in explanation thereof, I have the honour to inform you that I have communicated with the General Commanding in Chief on the subject, and I transmit herewith a copy of His Royal Highness' reply, signifying his approval of the scheme.

I wish at the same time to express my entire concurrence in the views of His Royal Highness, as herein stated.

The Right Hon.  
Sir C. Wood, Bart., M.P.

I have, &c.  
(signed) G. C. Lewis.

The Secretary of State for War to the Secretary of State for India.

Sir,

War Office, 14 February 1861.

WITH reference to your letter of the 9th instant, and its Enclosure, relative to the measures to be adopted for giving effect to the Act 23 & 24 Vict. c. 100, I have the honour to inform you that I have consulted the General Commanding in Chief, and to transmit herewith a copy of a letter which I have received from His Royal Highness on the subject, expressing his entire concurrence in your proposals.

I have requested His Royal Highness to take Her Majesty's pleasure on the addition of the proposed regiments to the Queen's army for general service.

The Right Hon.  
Sir C. Wood, Bart., M.P.

I have, &c.  
(signed) G. C. Lewis.

My Lord,

Horse Guards, 12 January 1861.

IN reply to your letter, dated 11th January 1861, enclosing for my consideration a Despatch from Sir Charles Wood, together with draft of a letter which it is proposed to address to the Governor General in India relative to the measures to be taken for giving effect to the provisions of the Act 23 & 24 Vict. c. 100, I desire to express my entire concurrence in Sir C. Wood's proposal.

The measures which Sir C. Wood desires to carry out seem perfectly calculated to meet the case in view, viz., to gradually absorb such Europeans of the existing Indian Forces, as do not wish to enter the line, and to transfer at once to the line all who are willing to be so transferred.

In the proposals made all existing interests are respected, and the new system will come into operation in a speedy manner.

I quite approve of soldiers of the Indian army entering the line in regiments numbered as suggested by Sir C. Wood, and I think it proper and desirable that those regiments should bring with them the honours and distinctions possessed by the old Indian regiments that they will respectively represent.

The early formation of depôts for these regiments is a point which I hope will not be overlooked, as though they may possibly be complete in men when re-formed in the manner suggested, they will certainly require recruits in 1862, who should be enlisted and trained during the present year.

The Right Hon.  
The Secretary of State for War.

I am, &c.  
(signed) George.

EXTRACT from MINUTES of COUNCIL, dated 17th January 1861.

THE Secretary of State then laid before the Council a letter dated the 14th instant, from the Secretary of State for War, enclosing a letter from H.R.H. the General Commanding in Chief, signifying Her Majesty's approval of the draft Warrant for the formation of a staff corps in each of the Presidencies of India, and of the draft Despatch to India in explanation thereof; also a letter from the Secretary of State for War, dated the 14th instant, with Enclosure from H.R.H. the General Commanding in Chief, expressing His Royal Highness's entire concurrence in Sir C. Wood's proposals relative to the measures to be adopted for giving effect to the Act 23 & 24 Vict. c. 100; also a letter from the Secretary of State for War, dated the 14th instant, with Enclosure from the General Commanding in Chief, stating that His Royal Highness concurs in the whole of the proposals for the assimilation and ultimate consolidation of the regiments of Indian artillery

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with

**Appendix, No. 6.** with the regular service, with the exception of the last, viz., the formation of the whole artillery of the Empire into separate regiments, which is, in His Royal Highness's opinion, inexpedient; and a further letter from the Secretary of State for War, dated the 14th instant, transmitting a letter from H.R.H. the General Commanding in Chief on the subject of the proposed assimilation of the regiments of the Indian Engineers with the corps of Royal Engineers.

The Secretary of State for War to the Secretary of State for India.

Sir,

War Office, 14 January 1861.

WITH reference to your letter of the 9th instant, on the subject of the assimilation of the regiments of the Indian Engineers with the corps of Royal Engineers, I transmit herewith for your information, a copy of a letter from the General Commanding in Chief on the subject.

I have to express my concurrence in the views of His Royal Highness.

I have, &c.

(signed) G. C. Lewis.

The Right Hon.

Sir C. Wood, Bart., M.P.

My Lord,

Horse Guards, S.W., 12 January 1861.

I do myself the honour to acknowledge the receipt of your Despatch, dated 11th January 1861, enclosing copy of a letter from Sir Charles Wood, in which he submits a scheme for the assimilation of the regiments of Indian Engineers with the corps of Royal Engineers, and I beg to express my concurrence in the proposed scheme.

\* Not brigades.

Seven battalions\* of officers will it appears about equal the present number of officers in the three corps of Indian Engineers, and will enable the relative proportions of those corps to be preserved.

With respect to the last paragraph of Sir Charles Wood's letter, I desire to observe that it is impossible to foretell exactly what may be the feelings of officers of the Royal Engineers who may hereafter proceed to India, as to working in accordance with the rules that now prevail in the Department of Public Works in that country, but I would urge that attention should be paid to the recommendation of Lord Hotham's Committee in a view to the public works in India being placed more on a footing with the same department in England, and in fact being constituted as a military department.

I hope, however, that the reorganisation of the Engineers may go forward at once, and irrespective of any prospective alteration of the rules of the Department of Public Works in India, and I would suggest that the whole of the proposed plan should be communicated to Sir John Burgoyne, the Inspector General of Fortifications.

With regard to officers of the present Indian Engineers who may wish to serve out of India as Engineers, I would suggest that some arrangement may be made for their relief, such as supplying their place by volunteers of the same rank from the corps of Royal Engineers, and it would be necessary that such officers of the former service should receive Royal Engineer commissions in the same manner as Royal Artillery commissions are proposed to be given for officers of Indian Artillery who volunteered for the Royal Artillery.

As respects the provision of non-commissioned officers for the native Sappers and Miners, I think it will be well, whenever necessary, to try the experiment of obtaining volunteers from the Royal Engineers, such men as volunteer being required to sign a declaration of their willingness to be remanded for gross misconduct to the Royal Artillery in India, as there are no companies of Royal Engineers in that country. Should no difficulty arise in obtaining sufficient volunteers from the Royal Engineers, volunteers may be taken from the line and trained at Chatham, like the Engineer soldiers who have hitherto been selected from the artillery and infantry recruits of the Indian forces.

These men could be remanded, in the event of misconduct, to any line regiment in India.

I am, &c.

(signed) George.

COPY of GENERAL ORDER by the Commander in Chief in India, dated 28 October 1861, No. 165.

His Excellency the Commander in Chief in India directs the publication of the annexed General Order, by his Excellency the Governor General in Council, notifying the formation of the late Indian Artillery into brigades of Royal Artillery.

The Commander in Chief in India experiences great satisfaction in obeying the orders of His Royal Highness the General Commanding in Chief, to convey to Brigadier Swinley, and the officers of the late Bengal Artillery, the expression of the heartfelt gratification which His Royal Highness has derived from the high military feeling which prompted them to

to come forward, almost in a body, and declare their readiness to serve our most Gracious Sovereign the Queen everywhere. Appendix, No. 6.

The Duke of Cambridge feels the conviction that the spirit of devotion and gallantry which has gained renown for the Bengal Artillery in so many Indian fields of honour, will distinguish them as Royal Artillery wherever their duty may call them.

The new Royal Artillery will conform henceforward to the rules and regulations of that arm of Her Majesty's British Service.

Brigadier Swinley will be good enough to instruct the officers commanding the different brigades and batteries, to furnish the Returns and Reports laid down in Her Majesty's Regulations, in accordance with the forms and instructions which have been forwarded to him.

He will, in future, address all correspondence connected with the brigades to the Adjutant General, Her Majesty's British Forces in India, for submission to his Excellency the Commander in Chief, and forward to that officer on the first of every month, or as soon after as practicable, a monthly numerical return; a monthly nominal list of officers.

The head quarters of brigades will be located as follows, for the present :—

2nd Royal Horse Brigade	-	-	-	-	Head Quarters, Meerut.
5th Royal Horse Brigade -	-	-	-	-	„ Umballa.
16th Brigade Royal Artillery	-	-	-	-	„ Delhi.
19th Brigade Royal Artillery	-	-	-	-	„ Ferozepore.
22nd Brigade Royal Artillery	-	-	-	-	„ Jullundur.
24th Brigade Royal Artillery	-	-	-	-	„ Lahore.
25th Brigade Royal Artillery	-	-	-	-	„ Agra.





R E P O R T

FROM THE

SELECT COMMITTEE

ON

MUTINY AND MARINE MUTINY  
ACTS;

TOGETHER WITH THE

PROCEEDINGS OF THE COMMITTEE,

MINUTES OF EVIDENCE,

AND APPENDIX.

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*Ordered, by The House of Commons, to be Printed,  
26 July 1878.*

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*Ordered,—[Thursday, 11th April 1878] :—*THAT a Select Committee be appointed to examine into the Acts, commonly called the MUTINY ACT and the MARINE MUTINY ACT, and into the Law relating to the subject-matters of those Acts, or made in pursuance of such Acts, and to report on any amendments it may be desirable to make therein, and on the form in which legislation on the matters aforesaid should be promoted.

THAT the Committee do consist of Twenty-one Members.

Committee nominated of—

Mr. Russell Gurney.	Sir Henry Wilmot.
Sir William Harcourt.	Mr. Hayter.
Colonel Loyd Lindsay.	Mr. Staveley Hill.
Sir Henry Havelock.	Mr. Parnell.
General Shute.	Mr. Merewether.
Colonel Mure.	Major O'Beirne.
Lord Elcho.	Mr. John Holms.
Viscount Hinchinbrook.	Lord Charles Beresford.
Mr. Campbell-Bannerman.	Mr. Herschell.
Sir Alexander Gordon.	The Judge Advocate General.
Admiral Egerton.	

THAT the Committee have power to send for Persons, Papers, and Records.

THAT Five be the Quorum of the Committee.

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## R E P O R T.

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THE SELECT COMMITTEE appointed to examine into the ACTS, commonly called the MUTINY ACT and the MARINE MUTINY ACT, and into the LAW relating to the subject-matters of those ACTS, or made in pursuance of such ACTS, and to Report on any Amendments it may be desirable to make therein, and on the form in which legislation on the Matters aforesaid should be promoted;—HAVE considered the Matters to them referred, and have agreed to the following REPORT:—

THOUGH the Order of Reference under which your Committee met was extremely large in its scope, and embraced the whole Military Law, your Committee have found it necessary to restrict the limits of their inquiry. The comparatively late period of the Session at which your Committee was assembled has precluded their entering upon the discussion of many questions of military law which, though of great importance and interest, could not have been satisfactorily disposed of, except upon the authority of a number of witnesses for whose examination no sufficient time could be afforded. To have postponed the inquiry to another Session would have left the consideration of the annual Mutiny Act in the ensuing year in the same difficulty which attended its discussion in the present Session.

Your Committee have therefore confined their attention to certain leading points which the time at their disposal permitted them to examine.

Your Committee have mainly directed their inquiry to an examination of a scheme for the reform of military law submitted to them by the direction of the Secretary of State, and explained to them by Sir H. Thring, the Government Draftsman. The course pursued, though somewhat unusual, was that which, on the whole, appeared the most convenient. The plan suggested by Her Majesty's Government was submitted to your Committee in the shape of a Draft Bill. As this scheme had not been laid before the House of Commons in the form of a Bill it was not possible for your Committee to deal with it in the ordinary method by amending the clauses. Your Committee therefore thought it best to go through the Draft Bill, treating it as a scheme, and report upon the general plan upon which it was framed, and some of the more important questions raised in the course of its discussion, rather than make themselves responsible for details which they were unable fully to examine or satisfactorily decide. What your Committee have been enabled to do must therefore be regarded as in no sense substituting their responsibility for that of the Executive Government, by whom the Bill in its ultimate shape must be submitted to Parliament.

The first question which engaged the attention of your Committee was the form of the scheme submitted to them. The evils of the present condition of military law were very clearly and emphatically pointed out by His Royal Highness the Field Marshal Commanding in Chief in his evidence before the Courts Martial Commission in the year 1869. On that occasion His Royal Highness said, "I certainly think that everything connected with military law should be made clear and simple, so that he who runs may read, and I do not think that is the case now. I think that the Mutiny Act and the Articles of War, and everything connected with them might be extremely simplified,

simplified, and, if anybody would undertake that task, I feel perfectly certain you would not have the perplexities and annoyances which now arise. I think that many of the officers of the army are in doubt as to the meaning of the wording of the Mutiny Act, and the Articles of War, in various instances." And in accordance with that opinion, the first recommendation of the Royal Commission was, "that the Mutiny Act and the Articles of War should be carefully redrawn." It appears that since that date, various schemes having that object in view have been devised, but the difficulties attending the matter have hitherto prevented their being carried into effect. The subject is one of singular complexity. The penal discipline of the army is dealt with in two separate documents, viz., the Mutiny Act and the Articles of War. The Articles of War are made by the Crown under the authority of the Mutiny Act, and their validity is subordinate to that Statute. The inconvenience is apparent of having a penal code thus distributed, especially having regard to the difficult and embarrassing questions which might arise as to the consonance in all respects of the Articles of War with the provisions of the Mutiny Act. A Paper submitted to your Committee by Sir H. Thring, entitled, "Provisions of the Mutiny Act and Articles of War, arranged under Headings," which will be found in the Appendix to this Report, shows how the same offences are occasionally dealt with in the Mutiny Act and the Articles of War, in language frequently not the same, and in a manner which would embarrass the most skilful tribunal in the administration of the law. Every consideration which has induced the Legislature to aim at the consolidation and codification of the criminal law applies with still greater force to the military law, which is administered by courts not having the advantage of a legal training. Quite apart, then, from any change or amendment in the provisions of the existing law, it is unquestionably a matter of the first importance to digest and consolidate the penal provisions of military law into one document under the same authority, expressed with the utmost simplicity and clearness.

If the military law is to be digested into one code, there only remains the question whether it should be all embraced in Articles of War, or should be entirely contained in a Statute. It is not necessary to discuss the first alternative, because it is not to be supposed that in the case of the heavy punishments attached to the graver military offences Parliament would part with the control which since the first passing of the Mutiny Act it has always asserted. The second course, viz., the incorporation of all the penal provisions contained in the Mutiny Act and the Articles of War in a single Statute, is that which has been adopted in the scheme submitted to your Committee on behalf of Her Majesty's Government. It is proposed that this Statute, when it has once received the assent of Parliament, should constitute a permanent military penal code, subject, of course, to amendment, as in the case of any other Statute; but that the constitutional principle of the control of Parliament over the Army should be preserved by making the code operative only by means of a short annual Bill, which will contain the ancient recitals of the Mutiny Act. Copies of the proposed code and the suggested annual Bill will be found in the Appendix.

It appears to your Committee that the plan adopted in the Draft Bill submitted to them is the correct one, and will be a great improvement on the existing system. The military law contained in the Mutiny Act, and the Articles of War, is the growth of nearly two centuries. In that lapse of time experience has no doubt prescribed almost all the provisions which the possible contingencies of military discipline could require. The state of the law must have therefore reached that stage of ripeness in which consolidation would produce its most beneficial results. To give to the provisions of the Articles of War, which have been made from time to time statutory authority, must be an obvious advantage, and would preclude all entangling questions which might be raised as to their validity. Your Committee have had the advantage of the opinion of his Royal Highness the Field Marshal Commanding in Chief on this subject. His Royal Highness, whilst giving his approval, generally, to the Draft Bill as a consolidation of the Mutiny Act and the Articles of War, for the discipline of the Army, insisted strongly that the "elasticity" requisite to enable provision to be made for unforeseen exigencies should be preserved by maintaining the power of the Crown to make further Articles of War, if necessary, from time to time. Your Committee concur in that opinion, and consider that the power

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at present given to the Crown by the Mutiny Act to make Articles of War should be preserved.

Assuming the principle thus approved by your Committee to be adopted, it is apparent that the consolidation of the provisions of the Mutiny Act and the Articles of War in a single statute might be effected in various ways. The existing law might be entirely recast, and no doubt in a new shape greater condensation of form and clearness of expression would be easily attainable. On the other hand, there is considerable advantage in retaining the language of the old law with which officers and soldiers are familiar, and making the new code, as far as possible, a reproduction of the ancient law with which the military tribunals are acquainted. The latter is the method which has been adopted in the Draft Bill submitted to your Committee, and they are, on the whole, satisfied that the course thus pursued is the right one, though, perhaps, some further simplicity might be attained without sacrificing altogether the resemblance to the old accustomed law.

Up to this point your Committee have only dealt with the form to be assumed by the proposed amendment of the law. For the reasons already stated, they have been unable to discuss at length or decide on many points of military law, but they have come to certain conclusions upon some general principles affecting its administration.

In the scheme of the Draft Bill it is proposed to establish the principle of a different scale of punishment in the case of certain offences committed in the course of active operations against an enemy, and the same offences committed when no such operations are in progress. The existing law recognises no such general distinction. But, as a fact, it is admitted that some offences, such, for instance, as a sentinel sleeping on his post, ought to be, and would be visited with very different severity in an actual campaign from that which would be awarded to them in ordinary service and time of peace. As the law should, as far as possible, conform to the actual state of things, your Committee are of opinion that the distinction drawn in the Draft Bill is sound in principle.

With reference to courts martial, your Committee are of opinion that the present form of the oath administered to the members of the tribunal is vague and unsatisfactory, and that the form of oath prescribed in the Naval Discipline Act should be adopted in its place, and inserted in the statute.

With reference to the procedure of courts martial, your Committee have considered, but have not taken any evidence upon the practice of courts martial with reference to the right of the prisoner to have his defence conducted by a professional adviser. In the present practice such assistance is permitted to him, and your Committee are of opinion that in no case should such assistance be refused.

Your Committee are also of opinion that in the case of a verdict of acquittal by a court martial the decision should be announced in open court, and the prisoner should be immediately discharged; and that if a court martial is re-assembled in order to review its decision, it should not be competent to the court to increase the severity of their former sentence. Your Committee have the authority of His Royal Highness the Field Marshal Commanding in Chief for the statement that the military authorities disapprove the practice of re-assembling courts martial for the purpose of reversing verdicts of acquittal, or aggravating sentences.

(*Vide Q. 1331.*)

In the course of their inquiry a difficult question presented itself to your Committee, viz., the manner of dealing with volunteers in respect of courts martial when acting with the regular forces. By the Volunteer Act, 1863, volunteers when on actual military service, are made subject to the Mutiny Act, with the reservation that volunteers are only to be tried by officers of the volunteer force. This provision is extended by the Regulation of Forces Act, 1871, to volunteers in time of peace, when acting together with regular forces for exercise and training. It would thus seem that by the statutes applicable to the volunteer force, no volunteer can be tried except by a court composed exclusively of volunteer officers. These provisions seem, however, to conflict with 151st Article of War, which provides that "when volunteers are attached to a body of regular troops, officers of the regular forces shall be competent to sit

upon courts martial in the same manner as officers of the force to which the accused belongs." An Article of War cannot override the express provision of a statute; and the provision in the 151st Article of War is therefore invalid, unless it be warranted by the 105th section of the present Mutiny Act, which enacts that when a corps of yeomanry or volunteers is attached to a corps of the army, "the officers, non-commissioned officers, and men of any corps so attached shall be deemed for all purposes to form part of the corps of the army to which they are attached." Great doubt, however, might exist whether the general words of the 105th section of the Mutiny Act could overrule the express provisions of the Volunteer Acts; and therefore, having regard to the contemplated legislation it appears to your Committee that this point should be clearly settled in the statute.

The system which has been in force since 1870 seems to point to the amalgamation, as far as possible, of the various branches of the service, which might with advantage be extended to the constitution of courts martial. If a volunteer regiment is brigaded with a body of regular forces, and two men join in committing the same offence, one being a volunteer, the other a regular soldier, it is obviously inconvenient, and might be detrimental to discipline that one offender should be tried by one tribunal, and the other by another tribunal, who might mete out different punishments. Your Committee are of opinion that under such circumstances the rule that a man should only be tried by officers of his own service should not be insisted on. In these cases officers of the regular force might be placed upon courts martial for the trial of volunteers, as provided in the 151st Article of War. But though, from the comparative inexperience of volunteer officers in military law, the converse proposition might not hold to the same extent, it might be expedient that properly qualified volunteer officers should have the advantage of the experience which would be acquired by serving on courts martial generally when acting with the regular forces.

It has been suggested to your Committee that it would be desirable considerably to increase the power of commanding officers to inflict the punishment of imprisonment, with a view to diminish the necessity for frequent regimental courts martial. Your Committee are of opinion that the power of commanding officers in this respect should be defined by the statute, but they have not had before them sufficient evidence to enable them to decide whether such power should be extended.

The matters dealt with by the 12th and 13th Articles of War, under the head of "Redress of Wrongs," appear to your Committee to require amendment. The 13th Article of War, which applies to non-commissioned officers and soldiers, is restricted to matters affecting their pay and clothing. Your Committee are of opinion that the opportunity to make complaints for the redress of wrongs should be afforded in as full a manner to non-commissioned officers and soldiers as to officers, and that whilst the act of preferring wilfully false charges should be constituted a specific offence, care should be taken that complaints should not be visited with punishment under the general clause against conduct in breach of good order and military discipline. Though it is probably necessary that some provision answering to the 105th Article of War should be made in order to meet unforeseen cases, your Committee are of opinion that special care should be taken that so general a penal enactment should be guarded by accompanying it with a proviso that it should not be employed for the punishment of any offence for which there is specific provision made in the statute.

*Vide Q. 1866.*

The attention of your Committee has also been directed to the classes of persons who ought to be subjected to military law. It appears from Section 2 of the Mutiny Act, that in the case of the Indian forces, the "licensed sutlers and all followers in or of any of the said forces," are made subject to the Mutiny Act. The mischief is the same in respect of this class of persons, whatever may be the force to which they are attached, and it appears to your Committee that the same provision should be enacted generally. The question of the liability of half-pay officers to military law was brought under the consideration of your Committee. It seems clear that hitherto officers on half-pay when unemployed, have not been regarded as subject to the Mutiny Act, though they are liable to summary dismissal by the Crown in case of misconduct. In the

the absence of any decided opinion of the military authorities as to the expediency of including this class of officers in the scope of the military law, your Committee have not thought it expedient to pronounce upon the subject.

When the penal provisions contained in the Mutiny Act and the Articles of War have been consolidated, as proposed in the Scheme of an Army Discipline Bill submitted to the Committee, there will remain a variety of provisions now found in the Mutiny Act and the Articles of War, which are not of a penal character, but belong rather to the administration of the forces. It is proposed by Sir H. Thring to embody these provisions in a separate Bill, or in a distinct part of the same Bill, as a code of "Army Regulation." This Bill was not in a sufficient state of completeness, nor would the time at the disposal of your Committee have sufficed for its examination; but some measure of the kind is obviously necessary as a complement to the Army Discipline Bill, and the two Bills together will comprehend the whole law applicable to the Army, so far as it is properly regulated by statute. The more orderly and perspicuous arrangement which such a scheme of consolidation would secure, would, in your Committee's opinion, be of great advantage in the administration of military law.

26 *July* 1878.

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## PROCEEDINGS OF THE COMMITTEE.

*Friday, 17th May 1878.*

### MEMBERS PRESENT:

Mr. Merewether. Colonel Loyd Lindsay. Mr. Russell Gurney. Sir Henry Havelock. General Shute. Sir Alexander Gordon. Mr. Staveley Hill.		The Judge Advocate General. Mr. John Holms. Mr. Hayter. Lord Elcho. Sir William Harcourt. Sir Henry Wilmot. Major O'Beirne.
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Sir WILLIAM HARCOURT was called to the Chair.

The Committee deliberated.

[Adjourned till Tuesday, the 28th May, at Twelve o'clock.]

*Tuesday, 28th May 1878.*

### MEMBERS PRESENT:

Sir WILLIAM HARCOURT in the Chair.

The Judge Advocate General. Colonel Loyd Lindsay. Colonel Mure. Sir Henry Havelock. Sir Alexander Gordon. Mr. John Holms. Mr. Merewether. Mr. Staveley Hill. Lord Elcho.		General Shute. Mr. Campbell-Bannerman. Viscount Hinchinbrook. Mr. Hayter. Mr. Parnell. Major O'Beirne. Admiral Egerton. Sir Henry Wilmot.
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Sir Henry Thring, K.C.B., was examined.

Committee deliberated.—Motion made, and Question proposed, “That in the opinion of the Committee it is desirable to consolidate and amend the law relating to the discipline of Her Majesty’s Army and Marine Forces, and that the Committee do proceed to consider the scheme of a Bill laid before the Committee by Sir Henry Thring under the instructions of Her Majesty’s Government for that purpose”—(*The Judge Advocate General*).—Amendment proposed, to leave out from the word “That” to the end of the Question, in order to add the words “It is desirable to consider the scheme for consolidating and amending the discipline of the Army and Marine Forces which has been laid before the Committee by Sir Henry Thring under the instructions of Her Majesty’s Government”—(*Lord Elcho*).—Question put, That the words proposed to be left out stand part of the Question.—The Committee divided:

Ayes, 12.

Colonel Loyd Lindsay. Sir Henry Havelock. Colonel Mure. Viscount Hinchinbrook. Mr. Campbell-Bannerman. Sir Henry Wilmot. Mr. Hayter. Mr. Staveley Hill. Mr. Merewether. Major O'Beirne. Mr. John Holms. The Judge Advocate General.		Noes, 4. General Shute. Lord Elcho. Sir Alexander Gordon. Admiral Egerton.
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Noes, 4.

General Shute.  
 Lord Elcho.  
 Sir Alexander Gordon.  
 Admiral Egerton.

Main

Main Question put, and *agreed to*.

*Resolved*, That in the opinion of the Committee it is desirable to consolidate and amend the law relating to the discipline of Her Majesty's Army and Marine Forces, and that the Committee do proceed to consider the scheme of a Bill laid before the Committee by Sir Henry Thring, under the instructions of Her Majesty's Government, for that purpose.

Sir Henry Thring, K.C.B., was further examined.

[Adjourned till Friday next, at Twelve o'clock.]

*Friday, 31st May 1878.*

MEMBERS PRESENT :

Sir WILLIAM HARCOURT in the Chair.

Mr. Merewether.  
Mr. John Holms.  
Major O'Beirne.  
General Shute.  
Sir Henry Havelock.  
Colonel Mure.  
Colonel Loyd Lindsay.  
The Judge Advocate General.  
Mr. Staveley Hill.

Lord Elcho.  
Mr. Campbell-Bannerman.  
Mr. Hayter.  
Viscount Hinchinbrook.  
Sir Henry Wilmot.  
Sir Alexander Gordon.  
Admiral Egerton.  
Mr. Herschell.

Field Marshal H.R.H. the Duke of Cambridge, K.G. (attending by permission of the House of Lords), was examined.

Sir Henry Thring, K.C.B., was further examined.

Mr. Cornelius O'Dowd, Major General Carey, C.B., Mr. Charles M. Clode, and Colonel J. H. Roche, were severally examined.

The Committee deliberated.

*Resolved*, That whilst the rights of the Crown under the Mutiny Act to provide, from time to time, for the discipline of the Army by Articles of War should be preserved, it is desirable that the provisions of the Mutiny Act, and the present Articles of War relating to discipline of the Army, should, as far as possible, be consolidated in a statute —(The Judge Advocate General).

[Adjourned till Tuesday next, at Twelve o'clock.]

*Tuesday, 4th June 1878.*

MEMBERS PRESENT:

The Judge Advocate General.  
Colonel Loyd Lindsay.  
Sir Henry Havelock.  
Sir Alexander Gordon.  
Major O'Beirne.  
Mr. John Holms.  
Mr. Merewether.  
Lord Elcho.

General Shute.  
Mr. Campbell-Bannerman.  
Mr. Hayter.  
Colonel Mure.  
Mr. Parnell.  
Lord Charles Beresford.  
Viscount Hinchinbrook.  
Sir Henry Wilmot.

In the absence of Sir William Harcourt, the JUDGE ADVOCATE GENERAL was called to the Chair.

Sir Henry Thring, K.C.B., Mr. James Cornelius O'Dowd, and Mr. Charles M. Clode were further examined.

[Adjourned till Tuesday, the 18th June, at Twelve o'clock.]

*Tuesday, 18th June 1878.*

MEMBERS PRESENT:

Lord Elcho.	Mr. Campbell-Bannerman.
Mr. Staveley Hill.	Colonel Mure.
Mr. Merewether.	Mr. Herschell.
Admiral Egerton.	Colonel Loyd Lindsay.
Mr. John Holms.	Sir Henry Havelock.
Sir Alexander Gordon.	Major O'Beirne.
Sir Henry Wilmot.	Sir William Harcourt.
The Judge Advocate General.	General Shute.

In the absence of Sir William Harcourt, the JUDGE ADVOCATE GENERAL was called to the Chair ; afterwards Sir WILLIAM HARCOURT in the Chair.

Sir Henry Thring, K.C.B., was further examined.

The Committee deliberated.

*Resolved*, " That it is expedient to include amongst the persons subject to military law generally all persons who are made subject to such law under Section 2 of the Mutiny Act, whether in India or elsewhere "—(*The Judge Advocate General*).

Sir Henry Thring, K.C.B., was further examined.

[ Adjourned till Friday next, at Twelve o'clock.

*Friday, 21st June 1878.*

MEMBERS PRESENT:

Sir WILLIAM HARCOURT in the Chair.

Mr. Campbell-Bannerman.	The Judge Advocate General.
Mr. John Holms.	Colonel Loyd Lindsay.
Sir Henry Havelock.	Lord Elcho.
Mr. Merewether.	Mr. Staveley Hill.
Sir Alexander Gordon.	Sir Henry Wilmot.
Admiral Egerton.	Mr. Parnell.
General Shute.	Mr. Herschell.
Major O'Beirne.	

Sir Henry Thring, K.C.B., Colonel J. H. Roche, Mr. C. M. Clode, and Mr. J. C. O'Dowd were further examined.

The Committee deliberated.

Motion made, and Question proposed, " That it is desirable to establish in certain cases a different scale of punishments with respect to offences committed in the course of active operations against an enemy, and offences committed where no such operations are in progress "—(*The Judge Advocate General*).—Amendment proposed, in line 1, after the words " it is," to insert the word " not"—(*Sir Alexander Gordon*).—Question put, That the word " not " be there inserted.—The Committee divided:

Ayes, 3.	Noes, 8.
Sir Alexander Gordon.	Colonel Loyd Lindsay.
Admiral Egerton.	Sir Henry Havelock.
Major O'Beirne.	Mr. Campbell-Bannerman.
	Sir Henry Wilmot.
	Mr. Staveley Hill.
	Mr. Merewether.
	Mr. Herschell.
	The Judge Advocate General.

Main Question put, and *agreed to*.

*Resolved*, " That it is desirable to establish in certain cases a different scale of punishments with respect to offences committed in the course of active operations against an enemy, and offences committed when no such operations are in progress."

Motion made, and Question proposed, " That having regard to to the discussion which took place in the House of Commons in the month of March last on the corporal punishments inflicted under the authority of the Mutiny Act, it is expedient that this Committee should

should take evidence in respect of punishments for crimes committed while on active service in the field"—(Mr. *John Holms*).—Amendment proposed, to leave out from the word "That" to the end of the Question, in order to add the words, "the Committee do now proceed further to consider the Draft Bill submitted to them"—(Mr. *Staveley Hill*).—Question put, "That the words proposed to be left out stand part of the Question"—The Committee divided :

Ayes, 2.  
Major O'Beirne.  
Mr. John Holms.

Noes, 10.  
Colonel Loyd Lindsay.  
Sir Henry Havelock.  
Lord Elcho.  
Mr. Campbell-Bannerman.  
Sir Alexander Gordon.  
Sir Henry Wilmot.  
Mr. Staveley Hill.  
Mr. Merewether.  
Mr. Herschell.  
The Judge Advocate General.

Words added.—Main Question, as amended, put:—*Resolved*, "That the Committee do now proceed further to consider the Draft Bill submitted to them."

Sir *Henry Thring*, K.C.B., was further examined.

[Adjourned till Tuesday next, at Twelve o'clock.]

*Tuesday, 25th June 1878.*

MEMBERS PRESENT: .

Sir WILLIAM HARCOURT in the Chair.

The Judge Advocate General.  
Mr. John Holms.  
Admiral Egerton.  
Sir Alexander Gordon.  
Sir Henry Wilmot.  
Colonel Mure.  
General Shute.  
Mr. Campbell-Bannerman.

Mr. Hayter.  
Major O'Beirne.  
Mr. Staveley Hill.  
Colonel Loyd Lindsay.  
Viscount Hinchinbrook.  
Mr. Parnell.  
Mr. Merewether.

Sir *Henry Thring*, K.C.B., and Colonel *J. H. Roche* were further examined.

The Committee deliberated.

Motion made, and Question, "That any purchase officer in Her Majesty's Service shall not be deprived in consequence of being cashiered of any portion of any sum of money that he may be entitled to receive from the Army Purchase Commissioners, either on retiring from the service or commutation of half-pay or pension"—(Major *O'Beirne*).—put, and *negatived*.

Sir *Henry Thring*, K.C.B., and Mr. *Charles M. Clode* were further examined.

The Committee deliberated.

Motion made, and Question proposed, "That it is the opinion of the Committee, that cashiering should be absolute in the case of drunkenness of an officer under arms"—(Colonel *Mure*).—Amendment proposed, to leave out from the word "That," to the end of the Question, in order to add the words, "the Committee do now proceed to consider Clause 25 of the scheme before the Committee"—(Mr. *Campbell-Bannerman*).—Question, That the words proposed to be left out stand part of the Question—put, and *negatived*.—Words added.

Main Question, as amended, put:—*Resolved*, That the Committee do now proceed to consider Clause 25 of the scheme before the Committee.

Sir *Henry Thring*, K.C.B., and Mr. *J. C. O'Dowd* were further examined.

[Adjourned till Friday next, at Twelve o'clock.]

*Friday, 28th June 1878.*

MEMBERS PRESENT :

Sir WILLIAM HARCOURT in the Chair.

Colonel Loyd Lindsay.  
Admiral Egerton.  
Mr. Merewether.  
Mr. Staveley Hill.  
The Judge Advocate General.  
General Shute.  
Mr. Campbell-Bannerman.  
Mr. Hayter.

Colonel Mure.  
Sir Henry Havelock.  
Sir Alexander Gordon.  
Major O'Beirne.  
Viscount Hinchinbrook.  
Mr. Parnell.  
Mr. Herschell.

*Resolved*, "That the opportunity to make complaints for the redress of wrongs should be afforded in as full a manner to soldiers as to officers; and that whilst the act of preferring wilfully false charges should be constituted a specific offence, care should be taken that complaints should not be visited with punishment under the general clauses against conduct in breach of good order, and military discipline"—(The *Chairman*).

Sir *H. Thring*, K.C.B., Mr. *J. C. O'Dowd*, Colonel *J. H. Roche*, and Mr. *C. M. Clode*, were further examined.

*Resolved*, "That it is desirable to include in the Act the oath administered to the members of the court martial"—(Mr. *Staveley Hill*).

Motion made, and Question put, "That the oath be in the form prescribed in the Naval Discipline Act"—(Mr. *Staveley Hill*).—The Committee divided:

Ayes, 8.  
Viscount Hinchinbrook.  
Mr. Campbell-Bannerman.  
Admiral Egerton.  
Mr. Hayter.  
Mr. Staveley Hill.  
Mr. Parnell.  
Mr. Merewether.  
Mr. Herschell.

Noes, 4.  
Colonel Loyd Lindsay.  
Sir Henry Havelock.  
General Shute.  
The Judge Advocate General

*Resolved*, "That the oath be in the form prescribed in the Naval Discipline Act."

[Adjourned till Tuesday next, at Twelve o'clock.]

*Tuesday, 2nd July 1878.*

MEMBERS PRESENT :

Sir WILLIAM HARCOURT in the Chair.

Sir Alexander Gordon.  
Mr. Merewether.  
Colonel Loyd Lindsay.  
Mr. John Holms.  
Major O'Beirne.  
General Shute.  
Mr. Campbell-Bannerman.

Mr. Hayter.  
Sir Henry Wilmot.  
The Judge Advocate General.  
Admiral Egerton.  
Colonel Mure.  
Viscount Hinchinbrook.  
Mr. Herschell.

Sir *Henry Thring*, K.C.B., Mr. *J. C. O'Dowd*, and Colonel *J. H. Roche*, were further examined.

[Adjourned till Tuesday next, at Twelve o'clock.]

*Tuesday, 9th July 1878.*

## MEMBERS PRESENT:

Sir WILLIAM HARCOURT in the Chair.

Sir Henry Havelock.  
General Shute.  
The Judge Advocate General.  
Mr. John Holms.  
Mr. Hayter.  
Major O'Beirne.  
Sir Alexander Gordon.

Mr. Merewether.  
Colonel Loyd Lindsay.  
Mr. Campbell-Bannerman.  
Sir Henry Wilmot.  
Colonel Mure.  
Viscount Hinchbrook.  
Mr. Parnell.

Field Marshal His Royal Highness the Duke of Cambridge, K.G. (attending by permission of the House of Lords), and Sir Henry Thring, K.C.B., were further examined.]

*Resolved*, "That any power given to the commanding officer to inflict the punishment of imprisonment should be made statutory, but the Committee decline to express any opinion as to the extent of the power which ought to be given to the commanding officer"—(The Chairman).

[Adjourned till Friday next, at Twelve o'clock.

*Friday, 12th July 1878.*

## MEMBERS PRESENT:

Sir WILLIAM HARCOURT in the Chair.

Colonel Loyd Lindsay.  
Admiral Egerton.  
Mr. Campbell-Bannerman.  
Mr. Merewether.  
Mr. Hayter.  
The Judge Advocate General.  
Major O'Beirne.  
Mr. Staveley Hill.

General Shute.  
Viscount Hinchbrook.  
Colonel Mure.  
Mr. Parnell.  
Mr. John Holms.  
Sir Alexander Gordon.  
Lord Charles Beresford.  
Sir Henry Havelock.

Sir Henry Thring, K.C.B., and Mr. C. M. Clode were further examined.

Motion made, and Question proposed, "That in the opinion of this Committee half-pay officers should be subjected to the Mutiny Act and Articles of War"—(Mr. Hayter).—Motion, by leave, withdrawn.

Motion made, and Question put, "That the Committee consider that the relation of officers on half-pay to military law should be clearly settled in the Statute, but in the absence of any decisive opinion from the military authorities as to the expediency of subjecting such officers to military law, the Committee are not prepared to pronounce definitely on the subject"—(The Chairman).—The Committee divided:

Ayes, 12.  
Colonel Loyd Lindsay.  
General Shute.  
Colonel Mure.  
Viscount Hinchbrook.  
Mr. Campbell-Bannerman.  
Admiral Egerton.  
Mr. Hayter.  
Mr. Staveley Hill.  
Mr. Merewether.  
Mr. John Holms.  
Lord Charles Beresford.  
The Judge Advocate General.

Noes, 2.  
Mr. Parnell.  
Major O'Beirne.

*Resolved*, "That the Committee consider that the relation of officers on half-pay to military law should be clearly settled in the Statute, but, in the absence of any decisive opinion from the military authorities as to the expediency of subjecting such officers to military law, the Committee are not prepared to pronounce definitely on the subject."

Sir Henry Thring, K.C.B., was further examined.

Motion made, and Question put, "That the Committee think that in the present state of the law as to the raising of volunteer forces, it is not desirable that any volunteer forces should be attached to any regiment of the Army serving in Ireland"—(Mr. Parnell).—The Committee divided:

Ayes, 4.  
General Shute.  
Mr. Parnell.  
Major O'Beirne.  
Lord Charles Beresford.

Noes, 7.  
Colonel Loyd Lindsay.  
Sir Henry Havelock.  
Colonel Mure.  
Mr. Campbell-Bannerman.  
Admiral Egerton.  
Mr. Hayter.  
Mr. Staveley Hill.

Sir Henry Thring, K.C.B., was further examined.

[Adjourned till Tuesday next, at Twelve o'clock.

*Tuesday, 16th July 1878.*

MEMBERS PRESENT :

Sir WILLIAM HARCOURT in the Chair.

Colonel Loyd Lindsay.  
Mr. Hayter.  
Admiral Egerton.  
Major O'Beirne.  
Lord Elcho.  
Sir Henry Havelock.

Mr. Campbell-Bannerman.  
General Shute.  
Viscount Hinchinbrook.  
The Judge Advocate General.  
Mr. Herschell.  
Mr. Parnell.

Sir Henry Thring, K.C.B., was further examined.

Motion made, and Question proposed, "That when militia or volunteer forces, or persons belonging to such forces are on actual service, or attached to a body of regular troops, it is not desirable that a court martial for the trial of offences committed by persons belonging to such forces, should of necessity be restricted exclusively to the officers of the forces to which the accused belongs"—(Colonel Loyd Lindsay).—Amendment proposed, to leave out from the word "That" to the end of the Question, in order to add the words "by the 23rd section of the Volunteer Act it is provided that officers, volunteers and non-commissioned officers of the volunteer force, shall only be tried by their own officers, and no sufficient grounds have been shown for a departure from this principle of the Act under which the discipline of the volunteer force has hitherto been efficiently maintained"—(Lord Elcho).—Question put, That the words proposed to be left out stand part of the Question.—The Committee divided:

Ayes, 8.  
Colonel Loyd Lindsay.  
Sir Henry Havelock.  
General Shute.  
Viscount Hinchinbrook.  
Mr. Campbell-Bannerman.  
Mr. Hayter.  
Mr. Herschell.  
The Judge Advocate General.

Noes, 2.  
Lord Elcho.  
Major O'Beirne.

Main Question again proposed.—Amendment proposed, at the end of the Question to add the words, "That it is deserving of consideration whether, as a consequence of the above recommendation, under similar circumstances, militia and volunteer officers duly qualified should not be eligible to serve upon courts martial constituted to try offenders belonging to the regular forces"—(Mr. Herschell).—Question, That those words be there added.—The Committee divided:

Ayes, 7.  
Colonel Loyd Lindsay.  
Sir Henry Havelock.  
Lord Elcho.  
Mr. Campbell-Bannerman.  
Mr. Hayter.  
Mr. Herschell.  
The Judge Advocate General.

Noes, 3.  
General Shute.  
Viscount Hinchinbrook.  
Major O'Beirne.

Words

Main Question, as amended, put:—*Resolved*, “That when militia or volunteer forces, or persons belonging to such forces are on actual service, or attached to a body of regular troops, it is not desirable that a court martial for the trial of offences committed by persons belonging to such forces should of necessity be restricted exclusively to the officers of the forces to which the accused belongs. That it is deserving of consideration whether, as a consequence of the above recommendation, under similar circumstances, militia and volunteer officers, duly qualified, should not be eligible to serve upon courts martial constituted to try offenders belonging to the regular forces.”

Motion made, and Question, “That in the case of general courts martial, that a court of appeal should be constituted to consist of one of the judges of the High Court of Justice, the Judge Advocate General, and Deputy Judge Advocate General”—(Major O’Beirne)—put, and *negatived*.

*Resolved*, “That when a court martial finds a verdict of acquittal, the verdict should be announced in open court, and the prisoner immediately discharged. That when a court martial is re-assembled, it shall not be competent to the court to increase the severity of their former sentence”—(Mr. Hayter).

Mr. J. C. O’Dowd was further examined.

[Adjourned till Friday, 26th July, at Twelve o’clock.]

*Friday, 26th July 1878.*

MEMBERS PRESENT:

Sir WILLIAM HARCOURT in the Chair.

Mr. John Holms.  
Sir Henry Havelock.  
The Judge Advocate General.  
Colonel Loyd Lindsay.  
Mr. Hayter.  
Mr. Campbell Bannerman.  
Sir Henry Wilmot.  
Admiral Egerton.  
Mr. Merewether.  
Sir Alexander Gordon.

Viscount Hinchbrook.  
Mr. Staveley Hill.  
General Shute.  
Colonel Mure.  
Major O’Beirne.  
Lord Elcho.  
Mr. Herschell.  
Mr. Parnell.  
Lord Charles Beresford.

Sir Henry Thring, K.C.B., was further examined.

DRAFT REPORT proposed by the *Chairman*, read the first time, as follows:—

“1. Though the Order of Reference under which your Committee met was extremely large in its scope, and embraced the whole Military Law, your Committee have found it necessary to restrict the limits of their inquiry. The comparatively late period of the Session at which your Committee was assembled has precluded their entering upon the discussion of many questions of military law which, though of great importance and interest, could not have been satisfactorily disposed of, except upon the authority of a number of witnesses for whose testimony no sufficient time could be afforded. To have postponed the inquiry to another Session would have left the consideration of the annual Mutiny Act in the ensuing year in the same difficulty which attended its discussion in the present Session.

“2. Your Committee have therefore confined their attention to certain leading points which the time at their disposal permitted them to examine.

“3. Your Committee have mainly directed their inquiry to an examination of a scheme for the reform of military law submitted to them by the direction of the Secretary of State, and explained to them by Sir H. Thring, the Government Draftsman. The course pursued, though somewhat unusual, was that which, on the whole, appeared the most convenient. The plan suggested by Her Majesty’s Government was submitted to your Committee in the shape of a Draft Bill. As the scheme of the Bill had not been laid before the House of Commons it was not possible for your Committee to deal with it in the ordinary method by amending the clauses. Your Committee, therefore, thought it best to go through the Draft Bill, treating it as a scheme, and report upon the general principles upon which it was framed, and some of the more important questions raised in the course of its discussion, rather than make themselves responsible for details which they were unable fully to examine or satisfactorily decide. What your Committee have been enabled to do must therefore be regarded as in no sense substituting their responsibility for that of the Executive Government, by whom the Bill in its ultimate shape must be submitted to Parliament.



" 4. The first question which engaged the attention of your Committee was the form of the scheme submitted by Sir H. Thring. The evils of the present condition of military law were very clearly and emphatically pointed out by His Royal Highness the Field Marshal Commanding in Chief in his evidence before the Court Martial Commission in the year 1868. On that occasion His Royal Highness said, 'I certainly think that everything connected with military law should be made clear and simple, so that he who runs may read, and I do not think that is the case now. I think that the Mutiny Act and the Articles of War, and everything connected with them might be extremely simplified, and, if anybody would undertake that task, I feel perfectly certain you would not have the perplexities and annoyances which now arise. I think that many of the officers of the Army are in doubt as to the meaning of the wording of the Mutiny Act, and the Articles of War, in various instances.' And, in accordance with that opinion, the first recommendation of the Royal Commission was, 'that the Mutiny Act and the Articles of War should be carefully redrawn.' It appears that since that date, various schemes having that object in view have been devised, but the difficulties attending the matter have hitherto prevented their being carried into effect. The subject is one of singular complexity. The penal discipline of the army is dealt with in two separate documents, viz., the Mutiny Act and the Articles of War. The Articles of War are made by the Crown under the authority of the Mutiny Act, and their validity is made subordinate to that Statute. The inconvenience is apparent of having a penal code thus distributed, especially having regard to the difficult and embarrassing questions which might arise as to the consonance in all respects of the Articles of War to the provisions of the Mutiny Act. A Paper submitted to your Committee by Sir H. Thring, entitled, 'Provisions of the Mutiny Act and Articles of War, arranged under headings,' which will be found in the Appendix to this Report, shows how the same offences are occasionally dealt with in the Mutiny Act and the Articles of War, in language frequently not the same, and in a manner which would embarrass the most skilful tribunal in the administration of the law. Every consideration which has induced the Legislature to aim at the consolidation and codification of the criminal law applies with still greater force to the military law, which is administered by courts not having the advantage of a legal training. Quite apart, then, from any change or amendment in the provisions of the existing law, it is unquestionably a matter of the first importance to digest and consolidate the penal provisions of military law into one document under the same authority, expressed with the utmost simplicity and clearness.

" 5. If the military law is to be digested into one code, there only remains the question whether it should be all embraced in Articles of War, or should be entirely contained in the Statute. It is not necessary to discuss the first alternative, because it is not to be supposed that in the case of the heavy punishment attached to the graver military offences Parliament would part with the control which since the first passing of the Mutiny Act it has always asserted. The second course, viz., the incorporation of all the penal provisions contained in the Mutiny Act and the Articles of War in a single Statute, is that which has been adopted in the scheme submitted to your Committee on behalf of Her Majesty's Government. It is proposed that this Statute, when it has once received the assent of Parliament, should constitute a permanent military penal code, subject, of course, to amendment, as in the case of any other Statute; but that the constitutional principle of the control of Parliament over the Army should be preserved by making the code operative only by means of a short annual Bill, which will contain the ancient recitals of the Mutiny Act. Copies of the proposed code and the suggested annual Bill will be found in the Appendix.

" It appears to your Committee that the plan adopted in the Draft Bill submitted to them is the correct one, and will be a great improvement on the existing system. The military law contained in the Mutiny Act, and the Articles of War, is the growth of nearly two centuries. In that lapse of time experience has no doubt prescribed almost all the provisions which the possible contingencies of military discipline could require. The state of the law must have therefore reached that stage of ripeness in which consolidation would produce its most beneficial results. To give to the provisions of the Articles of War, which have been made from time to time statutory authority, must be an obvious advantage, and would preclude all entangling questions which might be raised as to their validity. Your Committee have had the advantage of the opinion of His Royal Highness the Field Marshal Commanding in Chief on this subject. His Royal Highness, whilst giving his approval, generally, to the Draft Bill as a consolidation of the Mutiny Act and the Articles of War, for the discipline of the Army, insisted strongly that the 'elasticity' requisite to enable provision to be made for unforeseen exigencies should be preserved by maintaining the power of the Crown to make further Articles of War, if necessary, from time to time. Your Committee concur in that opinion, and are satisfied that in the Draft Bill submitted to them such a provision has been made.

" 6. Assuming the principle thus approved by your Committee to be adopted, it is apparent that the consolidation of the provisions of the Mutiny Act and the Articles of War in a single statute might be effected in various ways. The existing law might be entirely recast, and no doubt in its new shape greater condensation of form and clearness of expression would be easily attainable. On the other hand, there is considerable advantage in retaining the language of the old law with which officers and soldiers are familiar, and making the new code, as far as possible, a reproduction of the ancient law with which the  
military

military tribunals are acquainted. The latter is the method which has been adopted in the Draft Bill submitted to your Committee, and they are, on the whole, satisfied that the course thus pursued is the right one, though, perhaps, some further simplicity might be attained without sacrificing altogether the resemblance to the old accustomed law.

"7. Up to this point your Committee have only dealt with the form to be assumed by the proposed amendments of the law. From the reasons already stated, they have been unable to discuss at length or decide on many points of military law, but they have come to certain conclusions upon some general principles affecting its administration.

"8. In this scheme of the Draft Bill it is proposed to establish a different scale of punishment in the case of the offences committed in the course of active operations against an enemy, and offences committed when no such operations are in progress. The existing law recognises no such distinction. But, as a fact, it is admitted that an offence, such, for instance, as a sentinel sleeping on his post, ought to be, and would be visited with a very different severity in an actual campaign from that which would be awarded to it in ordinary service and times of peace. As the law should, as far as possible, conform to the actual state of things, your Committee are of opinion that the distinction drawn in the Draft Bill is sound in principle, as setting forth a rule which must in practice be always observed.

"9. With reference to courts martial, your Committee are of opinion that the present form of the oath administered to the members of the tribunal is vague and unsatisfactory, and that the form of oath prescribed in the Naval Discipline Act should be adopted in its place, and inserted in the statute.

"10. Your Committee are also of opinion that in the case of a verdict of acquittal by a court martial the decision should be announced in open court, and the prisoner should be immediately discharged; and that if a court martial is re-assembled it should not be competent to the court to increase the severity of their former sentence. Your Committee have the authority of His Royal Highness the Commander in Chief for the statement that the military authorities, since the evidence taken before the Royal Commission of 1868, have disapproved the practice of re-assembling courts martial for the purpose of reversing verdicts of acquittal, or aggravating sentences.

"11. In the course of their inquiry a difficult question presented itself to your Committee, viz., the manner of dealing with volunteers in respect of courts martial when acting with the regular forces. By the Volunteer Act, 1863, volunteers when on actual military service, are made subject to the Mutiny Act, with the reservation that volunteers are only to be tried by officers of the volunteer force. This provision is extended by the Regulation of Forces Act, 1877, to volunteers in time of peace, when acting together with regular forces for exercise and training. It would thus seem that by the statutes applicable to the volunteer force, no volunteer can be tried except by a court composed exclusively of volunteer officers. These provisions seem, however, to conflict with 151st Article of War, which provides that 'when volunteers are attached to a body of regular troops, officers of the regular forces shall be competent to sit upon courts martial in the same manner as officers of the force to which the accused belongs.' An Article of War cannot override the express provision of a statute. But having regard to the contemplated legislation, it appears to your Committee that this point should be clearly settled in the statute.

"12. The system which has been in force since 1870 seems to point to the amalgamation, as far as possible, of the various branches of the service, which might with advantage be extended to the constitution of courts martial. If a volunteer regiment is brigaded with a body of regular forces, and two men join in committing the same offence, one being a volunteer, the other a regular soldier, it is obviously inconvenient, and might be detrimental to discipline that one offender should be tried by one tribunal, and the other by another tribunal, who might mete out different punishments. Your Committee are of opinion that under such circumstances the rule that a man should only be tried by officers of his own service should not be insisted on. In these cases officers of the regular force might be placed upon courts martial for the trial of volunteers, as provided in the 151st Article of War. But though, from the comparative inexperience of volunteer officers in military law, the converse proposition might not hold to the same extent, it might be expedient that properly qualified volunteer officers should have the advantage of the experience which would be acquired by serving on courts martial generally when acting with the regular forces.

"13. It has been suggested to your Committee that it would be desirable considerably to increase the power of commanding officers to inflict the punishment of imprisonment, with a view to diminish the necessity for frequent regimental courts martial. Your Committee are of opinion that the power of commanding officers in this respect should be defined by the statute, but they have not had before them sufficient evidence to enable them to decide upon the extent of the power which ought to be conferred.

"14. The matters dealt with by the 12th and 13th Articles of War, under the head of 'Redress of Wrongs,' appear to your Committee to require amendment. The 13th Article of War, which applies to non-commissioned officers and soldiers, is restricted to matters affecting their pay and clothing. Your Committee are of opinion that the opportunity

tunity to make complaints for the redress of wrongs should be afforded in as full a manner to non-commissioned officers and soldiers as to officers, and that whilst the act of preferring wilfully false charges should be constituted a specific offence, care should be taken that complaints should not be visited with punishment under the general clause against conduct in breach of good order and military discipline. Though it is probably necessary that some provision answering to the 105th Article of War should be made in order to meet unforeseen cases, your Committee are of opinion that special care should be taken that so general a penal enactment should be guarded by accompanying it with a proviso that it should not be employed for the punishment of any offence for which there is specific provision made in the statute.

"15. The attention of your Committee has also been directed to the classes of persons who ought to be subjected to military law. It appears from Section 2 of the Mutiny Act, that in the case of the Indian forces, the 'licensed sutlers and all followers in or of any of the said forces,' are made subject to the Mutiny Act. The mischief is the same in respect of this class of persons, whatever may be the force to which they are attached, and it appears to your Committee that the same provision should be enacted generally. The question of the liability of half-pay officers to military law was brought under the consideration of your Committee. It seems clear that hitherto officers on half-pay when unemployed, have not been regarded as subject to the Mutiny Act, though they are liable to summary dismissal by the Crown in case of misconduct. In the absence of any decided opinion of the military authorities as to the expediency of including this class of officers in the scope of the military law, your Committee have not thought it expedient to pronounce upon the subject."

*Vide. Q. 1366.*

DRAFT REPORT, proposed by the *Chairman*, read a second time, paragraph by paragraph.

Paragraph 1, amended, and *agreed to*.

Paragraph 2, *agreed to*.

Paragraphs 3—7, amended, and *agreed to*.

Paragraph 8, amended.—Question put, That the paragraph, as amended, stand part of the Report.—The Committee divided :

Ayes, 14.

Colonel Loyd Lindsay.  
Sir Henry Havelock.  
Colonel Mure.  
Lord Elcho.  
Viscount Hinchinbrook.  
Mr. Campbell-Bannerman.  
Admiral Egerton.  
Sir Henry Wilmot.  
Mr. Hayter.  
Mr. Staveley Hill.  
Mr. Merewether.  
Mr. John Holms.  
Lord Charles Beresford.  
The Judge Advocate General.

Noes, 4.

General Shute.  
Sir Alexander Gordon.  
Mr. Parnell.  
Major O'Beirne.

Amendment proposed, That the following new paragraph be inserted in the Report :  
"Your Committee, however, think it right to draw attention to the fact that military evidence has been laid before the Committee that it is not desirable to make the distinction referred to"—(Sir Alexander Gordon).—Question put, That this paragraph be inserted in the Report.—The Committee divided :

Ayes, 2.

Sir Alexander Gordon.  
Major O'Beirne.

Noes, 16.

Colonel Loyd Lindsay.  
Sir Henry Havelock.  
General Shute.  
Colonel Mure.  
Lord Elcho.  
Viscount Hinchinbrook.  
Mr. Campbell-Bannerman.  
Admiral Egerton.  
Sir Henry Wilmot.  
Mr. Hayter.  
Mr. Staveley Hill.  
Mr. Parnell.  
Mr. Merewether.  
Mr. John Holms.  
Lord Charles Beresford.  
The Judge Advocate General.

Paragraph

Paragraph 9, *agreed to*.

Amendment proposed, that the following new paragraph be inserted in the Report: "With reference to the procedure of courts martial, your Committee are of opinion that the present practice by which a prisoner is allowed the advantage of legal advice, though his professional adviser is not permitted to act personally in the defence, is one which leads to no practical mischief, and has some advantages in the case of a military tribunal. Your Committee are nevertheless of opinion that in time of peace in the case of offences triable only by general courts martial, a soldier should be entitled of right to have his defence conducted as in an ordinary court of criminal judicature"—(Mr. *Parnell*).

Amendment proposed to proposed Amendment, to leave out, in line 1, from the words "your Committee," to the end of the paragraph, in order to add the words, "have considered, but have not taken any evidence upon the practice of courts martial, with reference to the right of the prisoner to have his defence conducted by a professional adviser. In the present practice such assistance is permitted to him, and your Committee are of opinion that in no case should such assistance be refused"—(General *Shute*).—Question put, That the words "are of opinion that the present practice by which," stand part of the paragraph.—The Committee divided:

Ayes, 8.  
Sir Henry Havelock.  
Colonel Mure.  
Lord Elcho.  
Mr. Parnell.  
Mr. Merewether.  
Major O'Beirne.  
Mr. John Holms.  
Mr. Herschell.

Noes, 10.  
Colonel Loyd Lindsay.  
General Shute.  
Viscount Hinchinbrook.  
Sir Alexander Gordon.  
Admiral Egerton.  
Sir Henry Wilmot.  
Mr. Hayter.  
Mr. Staveley Hill.  
Lord Charles Beresford.  
The Judge Advocate General.

Question put, That the words "have considered, but have not taken any evidence upon the practice of courts martial with reference to the right of the prisoner to have his defence conducted by a professional adviser. In the present practice such assistance is permitted to him, and your Committee are of opinion that in no case should such assistance be refused"—be added, instead thereof.—The Committee divided:

Ayes, 14.  
Sir Henry Havelock.  
General Shute.  
Colonel Mure.  
Lord Elcho.  
Viscount Hinchinbrook.  
Admiral Egerton.  
Sir Henry Wilmot.  
Mr. Hayter.  
Mr. Staveley Hill.  
Mr. Parnell.  
Mr. Merewether.  
Mr. John Holms.  
Lord Charles Beresford.  
Mr. Herschell.

Noes, 4.  
Colonel Loyd Lindsay.  
Mr. Campbell-Bannerman.  
Sir Alexander Gordon.  
The Judge Advocate General.

Question put, That the paragraph, as amended, be inserted in the Report.—The Committee divided:

Ayes, 10.  
Sir Henry Havelock.  
General Shute.  
Colonel Mure.  
Lord Elcho.  
Viscount Hinchinbrook.  
Mr. Hayter.  
Mr. Staveley Hill.  
Mr. Parnell.  
Mr. John Holms.  
Mr. Herschell.

Noes, 8.  
Colonel Loyd Lindsay.  
Mr. Campbell-Bannerman.  
Sir Alexander Gordon.  
Admiral Egerton.  
Sir Henry Wilmot.  
Mr. Merewether.  
Lord Charles Beresford.  
The Judge Advocate General.

Paragraph 10, amended, and *agreed to*.

Amendment proposed, that the following new paragraph be inserted in the Report:—"Your Committee have considered the question of corporal punishment, and are of opinion that such a sentence should not exceed 25 lashes, nor, if awarded by a regimental court martial or provost marshal, exceed 12 lashes"—(Mr. *Parnell*).—Question, That the paragraph be inserted in the Report,—put, and *negatived*.

Paragraph 11, amended, and *agreed to*.

Paragraph 12.—Amendment proposed, in line 11, to leave out all the words after the words "Article of War"—(Viscount *Hinchinbrook*).—Question put, That the words "But though" stand part of the paragraph.—The Committee divided:

Ayes, 11.

Colonel Loyd Lindsay.  
Sir Henry Havelock.  
Colonel Mure.  
Sir Henry Wilmot.  
Mr. Hayter.  
Mr. Staveley Hill.  
Mr. Parnell.  
Mr. Merewether.  
Major O'Beirne.  
Mr. Herschell.  
The Judge Advocate General.

Noes, 4.

General Shute.  
Viscount Hinchinbrook.  
Sir Alexander Gordon.  
Mr. Herschell.

Amendment proposed, in lines 13—14, to leave out the words "have the advantage of the experience which would be required by serving," in order to add the words "be eligible to serve"—(Mr. *Herschell*).—Question put, That the words proposed to be left out stand part of the paragraph.—The Committee divided:

Ayes, 9.

Colonel Loyd Lindsay.  
Sir Henry Havelock.  
General Shute.  
Colonel Mure.  
Viscount Hinchinbrook.  
Sir Alexander Gordon.  
Major O'Beirne.  
Lord Charles Beresford.  
The Judge Advocate General.

Noes, 5.

Mr. Hayter.  
Mr. Staveley Hill.  
Mr. Parnell.  
Mr. Merewether.  
Mr. Herschell.

Paragraph *agreed to*.

Paragraph 13, amended, and *agreed to*.

Paragraph 14.—Amendment proposed, at the end of the paragraph to add the words, "Your Committee are of opinion that rules should be issued for regulating the proceedings of Courts of Inquiry, when such Courts are assembled, for the purpose of investigating matters affecting the character or conduct of an officer or a soldier"—(Sir *Alexander Gordon*).—Question put, That those words be there added.—The Committee divided:

Ayes, 3.

Sir Henry Havelock.  
Sir Alexander Gordon.  
Major O'Beirne.

Noes, 8.

Colonel Loyd Lindsay.  
General Shute.  
Colonel Mure.  
Mr. Hayter.  
Mr. Staveley Hill.  
Mr. Merewether.  
Lord Charles Beresford.  
The Judge Advocate General.

Paragraph *agreed to*.

Paragraph 15.—Amendment proposed, in line 1, to leave out from the words "The attention" down to the words "enacted generally," in line 6, both inclusive—(Sir *Alexander Gordon*).—Question put, That the words proposed to be left out stand part of the paragraph.—The Committee divided:

Ayes, 9.

Colonel Loyd Lindsay.  
Sir Henry Havelock.  
General Shute.  
Colonel Mure.  
Mr. Hayter.  
Mr. Staveley Hill.  
Mr. Merewether.  
Lord Charles Beresford.  
The Judge Advocate General.

Noes, 2.

Sir Alexander Gordon.  
Major O'Beirne.

Paragraph *agreed to*.

Amendment proposed, that the following new paragraph be added to the Report: "When the penal provisions contained in the Mutiny Act and the Articles of War have been consolidated as proposed in the scheme of an Army Discipline Bill submitted to the Committee,

Committee, there will remain a variety of provisions now found in the Mutiny Act and the Articles of War which are not of a penal character, but belong rather to the administration of the forces. It is proposed by Sir H. Thring to embody these provisions in a separate Bill, or in a distinct part of the same Bill, as a code of 'Army Regulation.' This Bill was not in a sufficient state of completeness, nor would the time at the disposal of your Committee have sufficed for its examination. But some measure of the kind is obviously necessary as a complement to the Army Discipline Bill, and the two Bills together will comprehend the whole law applicable to the Army, so far as it is properly regulated by statute. The more orderly and perspicuous arrangement which such a scheme of consolidation would secure would, in your Committee's opinion, be of great advantage in the administration of military law"—(The *Chairman*).

Question, That this paragraph be added to the Report,—put, and *agreed to*.

Motion made, and Question proposed, "That the Committee proceed to consider the question of cumulative sentences, and take evidence thereupon"—(Mr. *Parnell*).—The Committee divided :

Ayes, 2.  
Mr. Parnell.  
Major O'Beirne.

Noes, 11.  
Colonel Loyd Lindsay.  
Sir Henry Havelock.  
General Shute.  
Colonel Mure.  
Sir Alexander Gordon.  
Mr Hayter.  
Mr. Staveley Hill.  
Mr. Merewether.  
Lord Charles Beresford.  
Mr. Herschell.  
The Judge Advocate General.

Question, That this Report, as amended, be the Report of the Committee to the House,—put, and *agreed to*.

*Ordered*, To Report, together with the Minutes of the Evidence, and an Appendix.

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# MINUTES OF EVIDENCE.

*Tuesday, 28th May 1878.*

## MEMBERS PRESENT:

Mr. Campbell Bannerman.  
Admiral Egerton.  
Lord Elcho.  
Sir Alexander Gordon.  
Sir William Harcourt.  
Sir Henry Havelock.  
Mr. Hayter.  
Mr. Staveley Hill.  
Viscount Hinchbrook.

Mr. John Holms.  
The Judge Advocate General.  
Colonel Loyd Lindsay.  
Mr. Merewether.  
Colonel Mure.  
Major O'Beirne.  
Mr. Parnell.  
General Shute.  
Sir Henry Wilmot.

SIR WILLIAM GEORGE GRANVILLE VERNON HARCOURT, q.c.,  
IN THE CHAIR.

Sir HENRY THRING, K.C.B., called in; and Examined.

*Chairman.*

*Chairman—continued.*

1. You are, as we all know, the principal draftsman to the Government; and you have, as I understand, prepared a Draft Bill, and also a Memorandum on the subject of the existing state of the law with reference to the discipline of the army?—Yes

2. I have before me three Papers: the Draft Bill (*vide* Appendix, No. 1), a Memorandum on Military Law prepared for the use of the Committee, and also a Memorandum put in by the Judge Advocate General, showing the alterations recommended by the Royal Commission appointed to inquire into the constitution and practice of courts martial in the army, and the present system of military offences, showing how far the existing law and practice conform or otherwise to those recommendations; before going into this scheme, the Committee would be glad if you would explain to them the reasons which have induced you, acting on behalf of the Government and under their instructions, to propose the alteration in the form of legislation with reference to military law that is represented by this Bill?—Perhaps I had better state very shortly the part that I have taken in the matter. I understand the object of the Committee to be, first of all, to consider what the existing military law is, and if necessary, to amend it; but, above all, to consider the form in which that military law should eventually be represented. The military law at the present moment is contained in the Mutiny Act and the Articles of War. On looking into the 0.111.

Mutiny Act and the Articles of War, I find that the Mutiny Act consists of 110 sections, and that there are 192 Articles of War. I find that the structure of the law is peculiar, as I will explain in a moment. The Mutiny Act starts by declaring the common law, that "no man can be forejudged of life or limb, or subjected in time of peace to any kind of punishment within this realm, by martial law." It then proceeds to give the Queen power to make Articles of War for the better government of the army. It then proceeds to say, in effect, that the Articles of War must be consistent with the Mutiny Act, and that they are not to impose the punishment of death or penal servitude, except in respect of crimes punishable by the Mutiny Act with death or penal servitude. It then proceeds, in its 15th section, to enumerate a large number of offences which are punishable with death or penal servitude. I then go to the Articles of War. I find that these Articles of War have existed for, I suppose, nearly 200 years; that they repeat, sometimes in the same words and sometimes in different words, the Mutiny Act, and that they also add a great number of offences. As a draftsman, I consider one object to be the putting of similar things together; so that what I have really done in the first place has been simply, so to speak, to sift, to the best of my ability, the Articles of War and the Mutiny Act, and to classify all the offences under particular headings. I need not say that it is for the Committee to consider whether the result

Sir  
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K.C.B.  
—  
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Sir  
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Chairman—continued.

result is good or bad, but that has been the process. I have sifted these Articles of War, and I have sifted the Mutiny Act, and I have classified the offences. Taking Part I., as to military law, I thought that whatever opinion the Committee might entertain as to whether my work was well done or badly done, it would be a great convenience to them to have before them definite propositions; and those definite propositions are a series of clauses collecting under separate heads the crimes enumerated in the Mutiny Act and the Articles of War. In another Paper which I have prepared (*vide* Appendix, No. 2), the provisions of the Mutiny Act and the Articles of War are reprinted side by side under the same headings, so far as was practicable, as the Headings of the Bill, so that any Member of the Committee who likes may at once turn to that Paper and see whether I have deviated, and if so, how I have deviated from the originals. Of course I need not say that it is absolutely impossible to photograph or reproduce documents which have been going on for 200 years. I do not wish to exaggerate the confusion or the labour, but if you will look at the marginal notes of the scheme of the Bill that I have submitted to the Committee, you will find, for instance, that under the head of "Misconduct on Service," there is the 15th section of the Mutiny Act, and there are 17 sections of the Articles of War relating to the same subject matter; and those sections cross each other in every possible mode, and in my opinion are to the last extent difficult to understand. Again, take "Mutiny and Insubordination;" there again, if you look at the corresponding provisions, you will find that there is one section of the Mutiny Act, and there are some dozen or more Articles of War, applying to the same subject matter; and so on. Therefore, at all events, I have endeavoured to assist the Committee to the utmost of my power by collecting that part of the law. Then, if you proceed to the next part of the Bill, "The Administration of Military Law," I have adopted the same course there. I have endeavoured in that part to collect, according to a particular classification (of which the Committee will easily see the object from merely looking at the arrangement of the clauses), the provisions relating to "arrests," "courts of inquiry," "courts martial," "proceedings of courts martial," and so forth; and similar observations apply to Part III., "The Application of Military Law." The Committee may consider that these clauses are badly drawn, or that they are well drawn, or that they want great change; but there they are as propositions for the consideration of the Committee. Therefore, in short, what I have endeavoured to do is to assist the Committee by consolidating or putting together in a certain classified order what appear to me on the whole to be the contents of the Mutiny Act and the Articles of War (so far as relates to military discipline) under the several headings by which they are distinguished in this Bill. Of course when we go through the scheme, if the Committee are good enough to go through it with me, I shall be prepared on every occasion to tell the Committee what the alterations are, and they will judge for themselves whether the alterations are or are not expedient; but, as the Government counsel, I was ordered

Chairman—continued.

to do what I could for the Committee, and at rather short notice I have done it, by putting everything relating to discipline in an analysed and classified form in a scheme of a Bill.

3. May we understand, then, that this Bill is mainly a Consolidated Bill of the Mutiny Act and the Articles of War?—Mainly; but as you, Sir, know better than anybody else, when you come to classify and arrange old law of this sort, there are a great many omissions; I daresay there will be sins of commission too, but probably there will be a great many more omissions; but, speaking generally, it is consolidated. I will give an example of a distinction between the Draft Bill and the Mutiny Act. Under the Mutiny Act punishments are constantly referred to as "such punishments as a general, garrison, district, regimental, or detachment court martial may award." Now in the Draft Bill I have done exactly as I did in the case of the Naval Discipline Act (I am afraid to say how many years ago, nearly 20 years ago, I think), where instead of classifying the punishments in that way, instead of saying "A punishment such as a general court martial shall award," I have said, "A punishment not exceeding penal servitude," or as the case may be. That is one instance in which I have deviated very widely from the language, but not very widely, in my opinion, from the real intent of the Mutiny Act. The same remark applies to the forms of clauses; all the clauses are re-drawn from beginning to end.

4. It will be, of course, very important to us, when we come to consider the Bill itself, to know, and probably you will be able to assist us by some paper pointing out what is mere consolidation of that which actually exists, and what is in any respect new or changed?—I will do so to the best of my ability, but it is a difficult task. Take the case of any mutiny or desertion; when you come really to consider whether I have changed the law or not, it will be a matter of lengthy argument, because you have got to compare some 10, or 11, or 12 clauses. I have done my best to represent those clauses with certain changes which were on the whole thought to be improvements. But, of course, it is often a matter of opinion whether I am right or wrong in the view that I take as to the change.

5. But what I wish to know is what, in your opinion, is changed, and what, in your opinion, is simply consolidation, because that will assist us very much?—I shall be happy to give the Committee all the information I can.

6. Does this Bill contain everything relating to discipline that is to be found in the Mutiny Act, and the Articles of War?—I hope it does, but I have been extremely hurried, and I must test it carefully again before I can answer the question with complete accuracy.

7. It is intended to contain everything?—It is intended to contain everything, and it ought to contain everything. When it comes out from the Committee, at all events, it ought to contain everything which the Committee thinks relates to discipline in the Mutiny Act and the Articles of War.

8. Does it contain anything relating to discipline which is not at present in the Mutiny Act and the Articles of War?—There has been an alteration, to begin with, with respect to desertion, as to the difference between desertion and

*Chairman—continued.*

and absence without leave, which I will explain to the Committee when they come to it.

9. Does it propose to add anything to, or to change anything substantially from, that which now exists in the Mutiny Act and the Articles of War?—I do not think it can be said to add anything; I am sure that it does not add any new crime. But I should say that it has deliberately changed several things, and it probably has inferentially changed divers other things; because, whenever you come to consolidate, it is a matter of opinion whether you have or have not changed the law; but it is substantially the same.

10. Therefore I may take it that the object of this Bill is substantially to consolidate the enactments of the Mutiny Act and the Articles of War as they at present stand?—Yes, substantially; but there are considerable qualifications, on account of the extreme difficulty of arranging old law in the new shape in which we usually now arrange Acts of Parliament. You cannot photograph the old law in a new Bill, as I could prove to the Committee by taking any set of clauses.

11. Let me ask you generally whether the main object that you have had in view has been to place before those who have to administer this law, who are not, generally speaking, persons of legal training, the law in a clearer and simpler form?—Yes; my object, *quid* counsel, has been this: I think the soldier ought to have a clear code of law which he can read and understand; and with that view I have deliberately retained the old language (and I believe gentlemen whose opinion is greatly to be deferred to think it has been too much retained), in order that the soldier may have the old language which he has been accustomed to hear.

12. In your opinion, is the present state of the law as contained in these various documents one of considerable confusion, which makes it difficult for persons to administer it?—I really do not think the confusion can be exaggerated. My friends, the soldiers, tell me that it is not so, at least, some of them; but I cannot agree with them; and I think that before the Committee has terminated its sittings it will be disposed to agree with me as to the confusion of the existing law if the question arises.

13. I understand from your memorandum that this consolidation of the enactments of the Mutiny Act and the Articles of War is not intended to be an annual Bill, but that you propose to bring it into operation by a short annual Act?—I do; and I have brought a copy of the annual Act, if the Committee would like to see it. To tell the truth, I forgot to circulate it. I propose to put the preamble of the Mutiny Act into the annual Act, and then to attract the new Act in the same way as you attract the Consolidation Acts, with which you, Sir, are so familiar.

14. You would put in the annual Act all the important constitutional recitals in the first and second clause of the Mutiny Act?—Yes.

15. Those would, of course, form a portion of the annual Act?—Entirely so. You happen, Sir, to be very familiar with the process. It is exactly the same as the incorporation in an Act of the Lands Clauses Consolidation Act. I should propose to make the new Act part of the annual Act by reference.

16. So that the whole constitutional control of  
0.111.

*Chairman—continued.*

Parliament over the army would be preserved exactly as it is?—Precisely, as far as the Parliamentary action goes.

*Mr. John Holms.*

17. I quite understand that the Mutiny Act is to be an annual Act; as regards the codified Act which you propose, do you suggest that it should be a permanent Act?—The codified Act will be permanent in the sense that it will not come before Parliament unless they want to alter it, and then it will be altered the same as any other Act may be altered.

*Sir Alexander Gordon.*

18. Could you prepare for the use of the Committee a memorandum showing how each clause of the present Mutiny Act and each of the present Articles of War is provided for under the proposed Acts in the manner following: On one side a clause of the Mutiny Act of 1878, now existing, or an Article of War, and on the other side the clauses of the new Bills providing for the substance of that clause or article; my object being that nothing should slip out of the present Mutiny Act without our knowledge?—I can hardly show all the alterations, because it is physically impossible; but I have done what is very nearly the same: I have given you in a Paper before the Committee all the comparative clauses. I can also give you, if you like, an index to the Mutiny Act, which I have had prepared for private use, and you can mark it through yourselves.

19. With regard to the physical impossibility, are you aware of what was done in the year 1860, when the Mutiny Act was very extensively revised?—No, I am not.

20. The alterations in that year, both of the Mutiny Act and of the Articles of War, were so extensive that it was found quite impossible to print them for the information of Parliament and the army in the usual manner, and therefore they adopted the course which I have now suggested; the substance of the clauses of the old Act being shown to be provided for in the clauses of the new Act?—If you like I will mark through, or have marked through, the marginal notes of the Mutiny Act and the Articles of War, with references to where they are found in the new Bills, giving, in fact, the counter references to those now on the Bill. Of course the Regulation Bill is not completed.

21. I want to know that nothing drops out of the present Mutiny Act?—I cannot do impossibilities; I cannot make an Army Regulation Bill and an Army Discipline Bill when time has not been allowed to do it in; but I will do my best to satisfy you.

22. May I not remind you that this was promised to Parliament last year?—As I tell you, I have done my best for the Committee, but I cannot put before the Committee a Bill which is not ready.

23. One of my reasons for making that suggestion was that I think you stated, in answer to the Chairman, that you were of opinion that the provisions of the Mutiny Act were very involved and difficult of application; but I think you said, "My friends the soldiers say that it is not so;" did I understand you rightly?—Yes, entirely so. Some of the soldiers tell me that they think that

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Sir Alexander Gordon—continued.

to keep one set of offences in the Mutiny Act and another set of offences in the Articles of War, is a good thing; I do not think so. My own opinion is that it would be better to have them all in one document.

24. Are you aware that the Commission which sat in 1868 and 1869 reported with regard to courts martial, "These courts have the confidence of the army, and they are satisfactorily spoken of, even by those who have been subject to their jurisdiction"?—Upon that point I can express no opinion.

25. My object is to press upon the Committee the importance of our not losing anything that is in the existing Mutiny Act, because it gives satisfaction to the army to a very great extent; and the labour of going through these documents, and seeing whether they contain the whole of the present Mutiny Act, is so great that I do not think any Member of the Committee could do it?—In the first place, I am absolutely certain that there is no part of the Mutiny Act relating to discipline that is not contained in the proposed Bill. I am perfectly certain that Part I. of this Act comprises all the crimes that are in the Mutiny Act and in the Articles of War, with those changes which I will point out to the Committee as I go through the Bill.

Major O'Beirne.

26. What relation do they bear to one another?—With regard to these parallel clauses, what I have done is this: in order that the Committee might see for themselves whether the consolidation was fairly done, I have had reprinted on a separate paper, under the headings which I have put to my own Bill, the corresponding clauses of the Mutiny Act and the Articles of War of the Bill, which you will find referred to in the margin; but I should have no difficulty whatever in showing the Committee whether anything is omitted.

Chairman.

27. As I understand, the wish of the honourable and gallant member for Aberdeenshire is that we should have put against each section of the Mutiny Act and each section of the Articles of War, a reference to the part of the Bill in which that particular provision is made?—I will do that, certainly.

Sir Henry Havelock.

28. With regard to the question which has just been put to you by the honourable and gallant Member for Aberdeenshire, you will find in the index to the Mutiny Act, from pages 7 to 15, all the provisions of the Mutiny Act; and, again, in the table of contents of the Articles of War, in pages from 279 to 290, you will find all the provisions of the Articles of War; would there be any difficulty in reprinting those two tables and adding to the right a column showing clause by clause where the corresponding provision has been carried into the draft of your Bill?—None at all, and I propose to do that.

29. I see that in the draft of your proposed Bill, at Clause 81, there is retained a power to Her Majesty, which exists, of course, in the 1st section of the present Mutiny Act, to make Articles of War which shall be in accordance with the sections of the Mutiny Act; but I see also that, in this draft, you take many of the

Sir Henry Havelock—continued.

Articles of War; for instance, all the articles from the 31st down to beyond the 80th, and you introduce them into clauses of the Army Discipline Bill?—Yes, that is so; I have put all the crimes together.

30. If you, in point of fact, do away with the Articles of War to that extent by bringing them as clauses into the Army Discipline Bill, to what will extend the power which you retain to Her Majesty by the 81st clause of framing Articles of War which shall be in accordance with those clauses; it appears to me that there is a discrepancy there, that you retain the Act nominally by your 81st clause, but that you do away with it practically; it appears to me that there will be no longer any scope, as it were, for the function of Her Majesty in framing from year to year Articles of War?—Undoubtedly the area of power will be limited. If I put into the Mutiny Act all the offences which have been for a hundred years in the Articles of War, and which have hardly ever been altered, the power of creating Articles of War will probably be limited.

31. Will it exist at all?—It will exist; but if I put all the crimes now in the Articles of War into the Mutiny Act, of course I cannot deny that there will not be so many crimes left in the Articles of War.

Chairman.

32. What I understand is that you will consolidate all the existing Articles of War, but that you will not take away from the Sovereign the power to make new Articles of War on different subjects?—I have great doubts about the extent of the power as it has been exercised, but that has nothing to do with it. I have put in the power *ipsissimis verbis*, and it will be for you to consider how far that power can be legally exercised. I have great doubt indeed as to this power of creating new crimes about which so much is said, but whether it be so or not I leave the power.

Sir Henry Havelock.

33. You leave the power nominally, but, practically, the necessity for the exercise of the power ceases to exist?—Certainly, to a great extent. I do not believe that the ingenuity of man can discover a crime which you cannot try under the first part of my Act. If any gentleman here, be he soldier or be he civilian, will tell me any crime on earth which you cannot try under the first part of my Act, I will give the question up.

Chairman.

34. If there were such a crime discovered by the ingenuity of man, your clause would give as much power for making a new Article of War with relation to it, as at present exists?—Yes. Indeed it would be rather stronger in words; but how you are to discover what is undiscoverable I do not know.

Sir Alexander Gordon.

35. Do you wind up with what we call the "devil's article"?—Yes. There are two sets of crimes. You can try any crime of a felonious or fraudulent nature, and you can try any crime against good discipline. How any offence that mortal man can commit is not either

of

*Sir Alexander Gordon*—continued.

of a felonious or fraudulent nature, or against good discipline, I do not know.

*Sir Henry Havelock.*

36. Then, in effect, the power to deal with discipline by defining punishment by the Articles of War for the future ceases, and the whole power is controlled, in its smallest details, by the House of Commons, through the agency of the Army Discipline Act?—Neither more nor less than at present. The House of Commons has passed every year a thing called a Mutiny Act, and it has given in that thing called a Mutiny Act power to Her Majesty to make Articles of War for the government of the Army.

37. Which power you practically take away?—Of course I take away practically the power of putting into Articles of War the offences which I put into the Act; but the House of Commons constantly alters the Mutiny Act; and they have got only to slip a word into a clause as to the Articles of War, and the power is as much taken away as it will be by this Bill. Parliament has quite as much power at present, and is rather more likely to exercise it, because, when this Bill has once passed, it will only come before Parliament when it is required substantially to be amended. Now every year they tinker up the clause as to the Articles of War, and it has become perfectly unintelligible.

38. So that the scale of punishment will be liable to be altered year after year by the House?—It is so now.

39. I do not object to the principle in the slightest degree; on the contrary, I rather approve of it; but it appears to me that a new practice is being introduced which is of the widest possible scope, and I merely wish to elicit from you whether the full effect has been thoroughly considered before the change was proposed?—Let me explain it a little further. The power to the Queen to make Articles of War is in the first or second section of the Mutiny Act, and you will find that that power is fettered in every possible way with regard to punishments. From time to time that power is altered; it comes before the House of Commons every year, and there is no more difficulty in altering that power, or restricting it, now, than there will be when this Bill is passed. In fact, if this Bill passes in its present form, it will contain all these Articles of War, and they will not come directly before Parliament; so that they are less likely to be altered.

40. I understood that this Bill would be enacted by Parliament once for all; you propose that it should be permanent, except as it may be changed from year to year?—Yes; assuming the Bill to be passed into an Act, that will not come before Parliament directly again, unless they want to amend it, like any other Act. I am afraid I have not made myself understood. I will assume that a Bill like this passes into an Act of Parliament. Then next year they will not bring in this Act, but they will bring in that shorter Act that I have shown the Chairman, which will put this Act in force by reference. Therefore, this Act itself will only pass once through Parliament, instead of passing through every year, and consequently changes will be less likely to be made than they are now.

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*Colonel Mure.*

41. As I understand, each year the Annual Discipline Bill will be brought in; that Bill will give force to the Army Discipline Act (which we will suppose will become an Act) and to the Army Regulation Act; the difference in future will be this: that whereas hitherto the Mutiny Act has been brought before Parliament, and has been subject to amendment under discussion by the House, in future the Army Discipline Act, and the Army Regulation Act, will be Acts which can only be amended by bringing in Bills which will amend them?—Quite so.

*General Shute.*

42. Special motions, in fact?—Yes. Of course technically you would alter it by means of the annual Act by putting in a special clause. Supposing that you passed Clause 4 of this Bill, and supposing that a Member wanted to alter it, what he would do would be to move that a clause be put into the Army Discipline Act altering Clause 4 of the Permanent Discipline Act.

*Mr. Staveley Hill.*

43. He would add to the end of Clause 1, "except as hereinafter provided"?—Yes.

*Sir Alexander Gordon.*

44. I observe that in the very first paragraph of the new Bill, a term is introduced which is new to me: "Every person subject to military law when on active service;" in some cases the law applies to persons on active service, and in others a distinction is drawn between crimes committed on active service and crimes not committed on active service; I think that is new?—That is quite true. We put it at one time, "during war," but we considered on the whole (and I believe that there I have the support of most of the soldiers, though I may be wrong there) that the best term that we could use to differentiate the circumstances would be "active service;" and that it was a better term than "a state of war," because a soldier is very often necessarily placed under more stringent conditions, although it may not be during war. For instance, he might be in the Colonies or he might be abroad when there was not actually a war going on; a great many cases would suggest themselves to military men; and therefore we thought that "active service" was the best term to use.

45. I observe that in the interpretation clause you put no definition of what active service is?—No, but I suppose that the Committee will tell me to do it.

*Mr. Merewether.*

46. Taking the 41st section as an illustration of your Bill, that is the clause commonly known as the "Devil's Article," in the Articles of War; you do not infringe upon the Queen's prerogative to pass that or any similar Article of War, but you also insert it in this Bill, and give it the sanction of Parliament?—Yes. The words in the clause are: "Every person who is guilty of disorder, neglect, or other conduct to the prejudice of good order and military discipline." I do not know that you can add anything to that, but if you can there is the power given to do so.

47. That is not at present in the Mutiny Act?—It is not.

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48. You

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Mr. Merewether—continued.

48. You simply put it into this Bill without at all infringing upon Her Majesty's prerogative to make fresh Articles of War if she so pleases; it leaves it exactly as it was?—It leaves it exactly as it was.

Sir Henry Havelock.

49. But the point that I wished to put was that by its being inserted in the Act it disappears altogether from anywhere else?—That is so.

Colonel Loyd Lindsay.

50. We are to have an Army Discipline Bill and an Army Regulation Bill; do you see any prospect of our having the Army Regulation Bill in a forward state before we proceed any further?—I will tell you what I have done. Some years ago I myself consolidated the enlistment clauses, and also the billeting and quartering clauses; but I am bound to say that to get them in order for the Committee would probably take a considerable time. However, I think it is quite possible that if the Committee get through this Bill, I might present them to the Committee.

51. So far as the Army Discipline Bill is concerned, that could stand alone without the Army Regulation Bill?—Quite so. The Mutiny Act at first never included all these things, but it has been found convenient to include them.

52. The Chairman asked you whether the Army Discipline Bill would contain everything relating to discipline which is now contained in the Mutiny Act; the Army Discipline Bill and the Army Regulation Bill together will substantially and in spirit contain everything, will they not?—Yes; assuming that they are properly drawn, the Army Discipline Bill *plus* the Army Regulation Bill ought to contain the whole military code relating to the Army that ought to be in a statute. Of course there will be great difference of opinion as to what ought to be in a statute and what ought not.

53. The Mutiny Act contains many provisions which are foreign to the question of discipline, does it not?—Entirely; notably the provisions with regard to enlistment, billeting, and quartering.

54. And, on the other hand, it does not contain within its area a complete code of provisions relating to the gravest offences, but leaves them to be dealt with by the Articles of War?—Yes; I think that the defect in a structure like that of the Mutiny Act and the Articles of War is that there is a great deal of needless repetition, and that you never get at one glance the whole of the offences relating to one particular subject matter.

55. I do not think you were asked whether the present Mutiny Act is applicable to the Marines when on land?—I believe that at the present moment the Marines have a separate Mutiny Act which, *mutatis mutandis*, with the exception of one or two provisions, is the same as the Army Mutiny Act. I believe that the Government propose to extend this Bill to the Marines, unless some objection is made, in order to avoid having to pass two Bills of exactly the same nature. I have a clause proposing to bring the Marines under this Bill, but, of course, that is a matter upon which I am not competent to give a judgment, except

Colonel Loyd Lindsay—continued.

that as a draftsman I see no difficulty in bringing in the Marines, unless they like to have an Act of their own.

56. There are many provisions, I understand, in the Mutiny Act which ought properly to come in the Army Regulation Bill?—Yes, a great number. I have scratched out a great many provisions relating, for instance, to Courts of Request in India. All those things have nothing to do with discipline; I believe that they are simply civil courts.

57. Amongst those is furlough in case of sickness; those are things which are now in the Mutiny Act which ought more properly to come under the Army Regulation Bill?—Furlough in case of sickness I have put in this Act on this ground, that a man would be punished for being absent without leave, unless he got a justice's order.

58. Then there is the disqualification of full-pay officers for certain civil posts?—That I have put in here, I think, because it seemed to me closely connected with discipline; but when you come to Part IV., it really will be for the Committee to judge whether they had better omit some provisions or put in some provisions. It is a mere matter of drafting.

59. Then there is the liability of apprentices, and claims of their masters, which is dealt with in Section 57?—I think that has gone into the other Bill.

60. Then there are the provisions as to billeting and movement of troops, and the provisions other than penal provisions?—Yes.

61. Then there is the provision as to the mode of recording soldiers' settlements?—That has gone into the other Bill. I thought that that was more germane to the other Bill.

62. Then there is the licensing of canteens, and the attestation of accounts?—The provision with regard to the licensing of canteens I put in here, because I supposed that it was connected with the disciplinary provisions; but whether that ought to be here or not, I really cannot say; it can easily be scratched out.

63. Then there are the provisions as to the Militia, Yeomanry, and Volunteers, and the Militia Reserve?—I think that the better way would be to put them in the application of the Act. I am sorry to say that I have not been able yet to draw the clauses properly with respect to them, but I hoped that before the Committee got to that part I should have them ready.

64. Then, in point of fact, most of these things which I have enumerated ought, in your opinion, to be collected under the Army Regulation Bill?—I think most of them, except the last ones. The clauses with relation to the auxiliary forces would probably come in better here, but I will have them prepared for the Committee, and they will judge for themselves which is the best place for them. It is really very immaterial.

65. Most of the graver offences which are now in the Articles of War will be embodied in the Army Discipline Bill, will they not?—Yes, every offence or crime, or whatever you like to call it, that is now in the Articles of War, I have put into this Bill.

66. But the power to frame Articles of War will still be within the prerogative of Her Majesty?—It is put in so many words; but with a strengthening clause that they are to be deemed within the powers of the Act.

67. So



Colonel *Lloyd Lindsay*—continued.

67. So that if there are any offences which are not included in the Army Discipline Act, they may be dealt with by the Articles of War?—Yes, if there be any.

Colonel *Mure*.

68. At page 5 of the Army Discipline Bill, in the index, at clause 81, it says, "power to Her Majesty to make Articles of War;" but, as we understand now, the term "Articles of War" seems to be merged in this new Army Regulation Bill which we have not yet before us; that will practically contain what were formerly the Articles of War?—No, it is exactly the contrary.

69. I understand that from the old Articles of War you have eliminated the penal clauses and put them into this new Army Discipline Bill?—Yes.

70. Practically you have separated the penal clauses from the regulating clauses?—Yes.

71. Then this Army Regulation Bill will be what has hitherto been called the Articles of War, will it not?—Yes, in some degree, in so far as relates to any regulating clauses which may be taken out of the Articles of War.

72. Then I do not quite understand the application of this power of Her Majesty to make Articles of War; that means power to add to what will in future be the Army Regulation Bill, does it not?—I beg your pardon, but you have misunderstood me. I assume, which is the case, that there are two sets of provisions applying to the army. I call the one set military provisions and the other set civil provisions, such as the mode in which you enlist, the mode in which you billet, the mode in which you quarter troops, the mode in which you take up carriages, the maintenance of illegitimate children, and other things which I should not consider to be connected with discipline; I should call them civil provisions. Let me for a moment use the term "civil provisions" applicable to the army. At the present moment the Mutiny Act and the Articles of War contain the whole of the military and civil provisions lumped up together. As far as I collect, most of the civil provisions are in the Mutiny Act, because the Queen could not make Articles of War with relation to the civil provisions, inasmuch as they relate generally to third persons not soldiers. Therefore when I talk of the Army Regulation Bill, the Army Regulation Bill does not contain, generally speaking, anything now contained in the Articles of War at all; but it contains the civil provisions of the present Mutiny Act. What I say is substantially correct, though perhaps not precisely so.

Sir *Henry Havelock*.

73. You do not contemplate, I suppose, passing one portion of the Act before the other, do you?—I do not think that it will be at all material. Of course, as a draughtsman, I should wish you to pass the whole. Supposing that the Committee were of opinion that the Army Discipline Bill ought to be passed, and that they had not time to pass the other, nothing would be easier than to strike out of the Mutiny Act all the clauses which they had passed in the Discipline Bill.

74. Then you would retain a Mutiny Act with a great portion of it struck out?—Certainly, I should not call it the Mutiny Act.  
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Sir *Alexander Gordon*.

75. I understand, then, that it would be necessary for the officers of the army to have two books instead of one; they will be obliged to have the Discipline Act and the Regulation Act?—But they will have much less than they have got now. They have got a Blue Book with about a dozen Acts in it, and I should give them one with two Acts in it. Whatever fault my scheme may have they will have much less to look at. I forget how many Acts of Parliament there are in that book, but I should diminish the number; I should not add to it.

*The Judge Advocate General*.

76. There seems to be an apprehension in certain quarters that this Draft Bill or scheme is likely to interfere with or limit the present power and prerogative of the Crown; in your opinion is that so?—As far as the prerogative of the Crown is concerned, it not only does not limit it, but it intentionally rather increases it, because I have struck out of the Bill everything relating to warrants and money, and left that entirely to the prerogative. As to the prerogative of the Crown, there will be an absolute saving clause of it at the end, and it is not touched in the remotest degree.

*Chairman*.

77. How do you mean that you have left out things relating to warrants?—Quite apart from the punishments and crimes of the army, there are an enormous number of things, as you, Sir, being familiar with martial law, well know, such as penal forfeitures and penal stoppages; in other words, there are a number of instances in which pay, and good-conduct pay, and good-conduct service, and military rewards and decorations, can be forfeited. For some time there have been clauses put into both the Mutiny Act and the Articles of War relating partially to these penal forfeitures and stoppages. Therefore the consequence has been that there have been actually three or four documents relating to those things. There have been the Queen's warrants, the Queen's regulations, the Articles of War, and the Mutiny Act, I believe also Army Circulars may be added. It appeared to me to be perfectly clear that inasmuch as pay is entirely under the prerogative, and *à fortiori* medals and military decorations and good-conduct pay, which are boons granted by the Crown, it would be better to strike out everything in the Act of Parliament relating to those matters, and to let them be regulated by the Queen's warrant or Queen's regulation.

78. But the incorporation of the present Articles of War, as you propose, with the Mutiny Act, really makes no difference to the power of the Crown?—Not the remotest. They were not under the prerogative; they are Parliamentary.

79. I see that this Draft Bill is called "a Bill to consolidate and amend the Law;" do you think it would be possible to do the thing simply by consolidation without some power of amending also, which is almost inseparable from consolidation?—Nobody knows better than yourself that as for photographing these old Acts it is out of the question. Of course an alteration is necessarily an amendment in one sense. I have tried over and over again to consolidate an Act without amendment, but it is impossible. You must amend

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*Chairman*—continued.

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amend it, in a sense, in the very process of consolidation.

80. If I recollect rightly that is the title of almost all Consolidation Acts?—Invariably. I never pretend to consolidate an Act in the sense of photographing old Acts; you cannot do it.

*Colonel Mure.*

81. This Army Discipline Annual Bill gives power to the Discipline Bill to take effect; but what effect will it have upon the Army Regulation Bill?—It will be a question for the Committee whether the Army Regulation Bill may not be made *ipso facto* permanent, because it is partly permanent. Another of the curious parts of this legislation is that the Mutiny Act being itself annual is constantly altering permanent Acts. For instance, the permanent Enlistment Acts are altered by the annual Mutiny Act. The Enlistment Acts are permanent, and yet portions of them are contained in the Mutiny Act and are technically annual.

*Chairman.*

82. The billeting will be in the Regulation Act, will it not?—The billeting will be in the Regulation Act.

*Chairman*—continued.

83. That surely you would keep under the annual power?—I daresay that that would be better; then I should answer that we should attract the Regulation Act in the annual Act.

*Colonel Mure.*

84. At any rate, it ought to be called the Army Discipline Annual Act for the purpose of enforcing the Discipline Act and the Regulation Act?—Yes.

85. But it involves a principle?—Yes. If the Committee decide that it is to be attracted, as the chairman seems to think it ought to be, then I shall amend the title of that Bill, and attract both the Acts.

*Sir Alexander Gordon.*

86. Would it be convenient to have it divided into two parts: Part I. referring to discipline, and Part II. referring to regulations?—There would not be the least objection to that; it would be pure pedantry upon my part to object. I think that on the whole it is better to separate the two subjects. On the other hand, Mr. Ayrton, who took great pains with the subject, thought that it was better to put them together; but that is a matter for the Committee, and I really have no opinion upon it.

*Friday, 31st May 1878.*

## MEMBERS PRESENT:

Mr. Campbell-Bannerman.  
Lord Elcho.  
Admiral Egerton.  
Sir Alexander Gordon.  
Sir William Vernon Harcourt.  
Sir Henry Havelock.  
Mr. Hayter.  
Mr. Herschell.  
Mr. Staveley Hill.

Viscount Hinchbrook.  
Mr. John Holms.  
The Judge Advocate General.  
Colonel Loyd Lindsay.  
Mr. Merewether.  
Colonel Mure.  
Major O'Beirne.  
General Shute.  
Sir Henry Wilmot.

SIR WILLIAM GEORGE GRANVILLE VERNON HARCOURT, Q.C.,  
IN THE CHAIR.

Field Marshal His Royal Highness the DUKE OF CAMBRIDGE, K.G., attending by permission of the House of Lords; Examined.

*Chairman.*

*Chairman—continued.*

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87. YOUR Royal Highness is probably aware that this Committee has been appointed "to examine into the Acts commonly called the Mutiny Act, and the Marine Mutiny Act, and into the law relating to the subject matter of those Acts or made in pursuance of such Acts, and to report on any amendments it may be desirable to make therein, and on the form in which legislation on the matters aforesaid should be promoted." The Committee have naturally been desirous at the earliest possible moment to have the advantage of your Royal Highness's high authority and experience in matters affecting Her Majesty's army; it is probably in your Royal Highness's recollection that there was a Royal Commission upon courts martial which sat in the year 1869, and before which your Royal Highness was good enough to give evidence?—Yes.

88. In order to found the question I have to ask, I will, with your Royal Highness's leave, call your attention to the following paragraphs in the Report of that Commission which particularly refers, I think, to the subject matter of the deliberations of this Committee. In their Second Report, at page vii, they say: "We would first call attention to the remarks made on the nature of the military law which has to be administered in these courts; the evidence before us shows that military law, as laid down in the Acts of Parliament and the Articles of War, is in a complicated state, and that not only in the courts themselves, but even in the highest military departments, there is often much difficulty in arriving at a just conclusion, owing to the different sources to which reference has to be made; we would especially call attention to the evidence of his Royal Highness the Field Marshal Commanding in Chief; His Royal Highness expresses an opinion that the frequent re-assembling of courts martial for the purpose of revising their proceedings, to which we shall hereafter advert, is attributable mainly to the difficulty which the courts often experience in ascertaining  
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the meaning of the wording of the Mutiny Act and Articles of War; His Royal Highness strongly recommends that both should be revised with a view to their being rendered more clear and simple. The Right Honourable Thomas E. Headlam, formerly a Judge Advocate General, states that the Mutiny Act, as it at present exists, is very confused and unduly long, and that there are some provisions in it which are unsuitable and unnecessary, and some which are obsolete; he recommends that a permanent military code should be enacted, and that only that part of the Mutiny Act which authorises the number of men should be submitted annually to Parliament; and that the military code should be made to resemble the Naval Discipline Act. The Right Honourable J. R. Mowbray, also formerly a Judge Advocate General, gives his opinion that military law is in a very 'confused,' 'uncertain,' and 'conflicting state;' he says, that 'in addition to the Mutiny Act, seven other Acts of Parliament, and the Queen's and War Office Regulations, he had often to refer to Royal Warrants, with reference to pay and promotion; and he adds that military law being in a condition which is perplexing to lawyers, he is afraid it must be unintelligible to soldiers; and both he and Mr. Headlam agree in recommending that the Mutiny Act should be very carefully revised and re-written, and made as clear as possible. We have received other evidence to the same purport, and we strongly recommend that the simplification of military law as suggested should receive the immediate attention of your Majesty's Government. It is obvious that laws affecting the honour, the liberties, and the lives of your Majesty's subjects should be as clear and simple as circumstances will allow, and it is equally obvious that the frequent re-assembling of courts martial for revision, referred to by His Royal Highness, must tend to diminish the respect with which they ought to be regarded by the British army. We believe that the task of consolidating the law with the above object will be best performed  
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*Chairman—continued.*

formed on the responsibility of your Majesty's Government." And then the first of their recommendations (on page x) is, "That the Mutiny Act and Articles of War should be carefully redrawn." I would ask your Royal Highness whether that passage which I have read, substantially represents your Royal Highness's opinion upon the subject?—Entirely. The only thing that I would observe with reference to it is, that in giving that opinion I certainly anticipated and understood that it was the intention to revise the Mutiny Act and the Articles of War; but I did not at that time understand that it was the intention to throw the whole into one Act.

89. I do not understand from that passage which I have just read, or from anything that your Royal Highness said in evidence then, that you desire that there should be any change made in the principles of the Mutiny Act?—I think the principles are perfectly sound. The only thing that I referred to was, that there were incidents in the Act which I thought had now become in some respects obsolete, and that there was a good deal of confusion; and that the result was, as I have expressed, that courts martial were at times placed in some difficulty as to how they were to act. Therefore anything that could simplify matters I thought would be not only very valuable but almost necessary; and with that view I gave that opinion.

90. We have had papers laid before us by Sir Henry Thring, which show that the various heads of offences are at present distributed in a very complicated manner, both through the Mutiny Act and through the Articles of War?—Yes, the various clauses are.

91. And that they are in many respects very difficult to follow?—They are.

92. I do not know how far your Royal Highness has had opportunity or time to look at the Draft Bill which has been submitted to this Committee?—This Bill is very recently drawn, and Sir Henry Thring, the draughtsman, has had the goodness to take charge of it. So far as the military authorities are concerned, though I do not for a minute doubt that there is everything in this Bill which has hitherto been dealt with in the Mutiny Act and the Articles of War, I do not make myself or any of the department responsible for it, because we have not had time to analyse it very minutely; and I believe that it is intended to bring in another Bill, in addition to this, which I have not seen at all. Therefore I confine myself to saying that I presume that the duly constituted authority has taken care that everything connected with military matters in the Mutiny Act and the Articles of War is represented in this Bill. It appeared to me necessary to make this observation because I think there was a remark made by Mr. Hardy that the military authorities would carefully consider this Act as well as the draughtsman; I only wanted to guard myself against the impression that we had gone in minute detail into it. We could only go into it superficially; at the same time, I do not for a moment pretend to say that it is not complete, so far as I am aware.

93. Subject to questions of detail, do I correctly understand, Sir, that you would be favourable to a scheme which should classify offences, and bring them all, as far as possible, under single heads?—Exactly; but at the same time I am extremely anxious that nothing should be done

*Chairman—continued.*

which should lessen the elasticity which has hitherto resulted from having the Mutiny Act and the Articles of War separate. This measure being an Act of Parliament, that elasticity may perhaps be diminished; I am not sufficiently cognisant of the law to know whether that be so or not; but I am very anxious to guard myself against saying anything to make the Committee suppose that I do not think it quite as desirable as heretofore to maintain that elasticity which we, as military men, have had the impression has existed by having the Mutiny Act and the Articles of War separate.

94. I understand that what you would desire, Sir, would be that, supposing any scheme of this kind were adopted, there should be still reserved the power of making Articles of War?—I think it absolutely necessary, because incidents may occur in military law which cannot be foreseen at all times; and if you put everything into an Act of Parliament, as is intended now, if you have not some means of meeting emergencies that arise, I am afraid that the discipline of the army would suffer, and we might get into great trouble.

95. Your Royal Highness is probably aware that there is a clause in the Draft Bill which proposes to reserve that power in exactly the same terms?—With reference to the clause as drawn, I may be quite in error, but it leaves me under the impression that in cases of war there is no elasticity given under that clause. I will read the words if you will allow me. It is the first proviso to Clause 81, and it is in these words: "That no person within the United Kingdom of Great Britain and Ireland, or within the British Isles, shall by Articles of War be subject to suffer any punishment extending to life or limb, or to be kept in penal servitude, except for crimes which are by this Act expressly made liable to such punishments as aforesaid, or shall be subject, with reference to any crimes made punishable by this Act, to be punished in any manner which does not accord with the provisions of this Act." That precludes the power of anything being done in time of war, supposing that an emergency of a very serious and grave character arises, which has not been foreseen in this Act; we cannot deal with that in the manner which I should imagine would be necessary unless it is within the provisions of this Act; so that virtually we can give no severe punishment in time of war if anything happens which has not been foreseen in this Act; and I think that is dangerous. We have always understood that in exceptional circumstances the Crown was empowered, under the advice of course of its Ministers, to meet any great emergency which might arise by means of an Article of War; and that, therefore, *pro tanto*, that Article of War was as legal as any portion of the Mutiny Act or the Articles of War passed from year to year. As I read this Bill, I think we are precluded from that by that proviso. I may be in error, and I say that, provided we are not precluded. I do not object to it; but if we are precluded, I think it would be very much hampering any general officer who is in command of troops in the field.

96. I understand, Sir, then, that your objection would apply to this clause, supposing it to be more restrictive than the existing law?—Just so; if it is not so, I have no objection to offer to it.

97. Your Royal Highness thinks that this clause

*Chairman—continued.*

clause may be more restrictive than the existing law ; and if so, you would not approve of that?—No.

98. But if it were not more restrictive, then your Royal Highness would not object to it?—Quite so.

99. I understand, Sir, that, subject to what your Royal Highness has said, so far as this Draft Bill is a consolidation of the existing law in the Mutiny Act and the Articles of War for the discipline of the army, you would not object to such a consolidation for the purpose of making the law more clear?—Not at all ; on the contrary, I should highly approve of it.

100. Supposing, then, that the right of making future Articles of War is saved in the Bill, and not restrained in any degree beyond the restrictions already placed upon it, your Royal Highness would be satisfied?—Certainly.

101. And in that manner your Royal Highness would consider that the prerogative of the Crown, in regard to the army, was duly protected?—I think so, most fully.

102. Are there any other observations that your Royal Highness would desire to offer upon this question?—No, I am entirely in the hands of the Committee. I think I have made myself clearly understood that I believe that everything contained in this Bill is necessary, but at the same time it has been entirely in the hands of the draughtsman, and we military have not had opportunity or time to go over it in detail.

*Mr. John Holms.*

103. I would venture to ask your Royal Highness one or two questions ; I believe the crime most prevalent in the army is desertion?—To a great extent that is so.

104. I think that, according to the Report of 1876 on Military Prisons, 54 per cent. of the whole crime in the army was attributed to that?—I do not know exactly the proportion, but it is very large, no doubt.

105. And desertions have been attributable more than ever to very young soldiers?—There is no doubt that the young soldiers are more disposed to desert than the older ones.

106. What I wished to lead up to was this : that your Royal Highness issued a letter (a copy of which appeared in the "Times" of February the 11th 1876) to commanding officers throughout the country ; and I should like to know whether your Royal Highness still adheres to the views expressed in this letter, if you will permit me I will read it, because it has some considerable bearing upon the causes of crime, and also upon how we should deal with them. "Sir, the attention of the Field Marshal Commanding in Chief having been called to the prevalence of acts of insubordination committed chiefly by very young soldiers, I have it in command to request that the subject may be seriously considered by all officers commanding corps in your district. It appears to his Royal Highness that in many instances young soldiers of good character have been tried by court martial for this crime who might with greater advantage to the service have been dealt with summarily by their commanding officer. In dealing with cases of insubordination, it is essential to take into careful consideration the circumstances under which they were committed, and to discriminate between those committed under aggravation and

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*Mr. John Holms—continued.*

those done deliberately. The former are frequently the result of a hot and hasty temper, the latter spring from confirmed wilfulness and bad spirit. A soldier, in the first year or two of his service, has not always been able to shake himself free from the effects of his early training in civil life, and frequently does not realise the consequences attendant upon acts of insubordination in the army. His Royal Highness is of opinion that in many instances the want of tact and proper manner on the part of non-commissioned officers gives rise to these acts of violence on the part of young soldiers, who are frequently very sorry for their conduct when they have had time to reflect. In cases where a commanding officer is of opinion that an act of insubordination is attributable to this cause, his Royal Highness considers that a serious admonition (joined perhaps to a slight punishment) and an ample apology to the non-commissioned officer concerned, together with an expression of regret for his improper conduct by the prisoner, might meet the case. Commanding officers, in their daily intercourse with their non-commissioned officers should impress upon them the necessity for especial discretion in their dealings with young soldiers, warning them against all harshness of tone or manner in the delivery of orders or instructions. Inexperienced non-commissioned officers are sometimes too prone to confine men for trifling faults of temper, that non-commissioned officers of standing would have dealt with by bringing the offender before the officer commanding his company. As a general rule, his Royal Highness does not wish soldiers to be confined for trivial offences by non-commissioned officers when the case can be inquired into by the officer commanding the offender's company, or, in his absence, by the adjutant, or by the officer on regimental duty, should the adjutant not be in barracks. His Royal Highness does not wish to lay down any very positive regulations, but desires me to express his views, generally, on the subject for the consideration of officers commanding corps in your district.—I have, &c., *J. W. Armstrong*, Deputy Adjutant General." Does your Royal Highness still adhere to the views expressed in this letter?—I entirely adhere to them.

*Sir Alexander Gordon.*

107. I should like to ask your Royal Highness, with reference to the confinement of a soldier, whether you assent to the doctrine which was stated in the House of Commons, I think last year, that a soldier who brings forward an accusation against an officer, or brings to notice anything that he thinks is improper, is thereupon to be confined without any charge made against him, because that is not provided in any of the conditions of confinement that are here?—It is generally a complaint that arises out of some indiscretion committed, or something that has gone wrong. Of course if a man merely wants to make a statement, you would not confine him ; but if a man has used bad language, or anything of that sort, of course then he would be confined, because it is an offence, however trivial it may be. Then, of course, it would remain for the authority to whom the appeal is made to decide whether that should be confirmed or not, therefore his confinement might be very short. For instance, in a cavalry regiment, a man may use very strong language in his stable, and he is confined

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confined for it; he would be brought up, and there might be nothing in it, and he might be let out again.

108. There is another question which I should like to put to your Royal Highness; when your Royal Highness gave evidence before the Courts Martial Commission in 1869, you gave a good deal of evidence upon the subject of courts of inquiry, and you stated that they were a very useful and necessary preliminary to the courts martial; but you stated that they were not satisfactory, for various reasons; does your Royal Highness still consider that courts of inquiry are a useful preliminary to trials by courts martial?—I do not see how we could get on without them. There are many things that must be sifted in some manner or other, and I do not know any other mode of sifting them, excepting in that way; and I think that sifting by two or three is more fair, than sifting by any individual who may have a bias one way or the other.

109. That being the case, would your Royal Highness see any objection to courts of inquiry being placed under certain regulations, so that they may be uniform in their procedure in different parts of the world?—I have no objection to there being regulations, but it would be extremely difficult to draw regulations of that description; because the variety of subjects coming before them is so great; but I should have no objection to regulations being drawn if it could be done.

110. Would your Royal Highness approve of such a regulation as this: that when an officer's or a soldier's conduct is inquired into by a court of inquiry, the officer or soldier whose misconduct is affected should have a right to know the opinion which is come to by the court of inquiry. At present the opinion of a court of inquiry is withheld from the person who is concerned, and in many cases it may be a very great injustice to him?—The object of sifting by courts of inquiry is to assist the authority that has to deal with the case. The court of inquiry does not deal with the case at all; the court martial deals with a case; but the court of inquiry only sifts the evidence for the authority that is to deal with the case. Therefore the opinion is entirely for that authority, and for nobody else. It may be, and very generally is, advisable for the authority to give the exact view of the court of inquiry to the individual; or, if the authority thinks it is better not to do so, he retains it within his own conscience; and, I think, it is safer to leave it in that way. I do not see what you would gain by such an alteration.

*Sir Henry Havelock*.

111. I conclude that what your Royal Highness has said with regard to the desirability of the power of making Articles of War being still retained, by their not being put in a hard and fast manner into the earlier part of this Act, relates principally to offences which might arise in time of war abroad?—Certainly; I intended to make myself clear upon that point. That was the main point.

112. And if, as we suppose, there is a pretty wide code taking in almost all the offences known to the service at present to be likely to occur in time of war, the necessity for subsequent articles to be made would be practically very small in-

*Sir Henry Havelock*—continued.

deed, would it not?—It would be small, but still I think cases might arise which could not be foreseen.

113. And it would be therefore desirable that the power should be still retained?—I think that the power should be still retained in order to meet any emergency of that description which might arise.

*Colonel Loyd Lindsay*.

114. Your Royal Highness's examination by the Chairman brought out your views very clearly, but perhaps you will allow me to remind your Royal Highness of what you said in 1868 with regard to the Mutiny Act: "I think that the examinations might be more strict than they are at present, but I certainly think that everything connected with military law should be made clear and simple, so that he who runs may read, and I do not think that that is the case now; I think that the Mutiny Act, and the Articles of War, and everything connected with them might be extremely simplified; and if anybody would undertake that task, I feel perfectly certain that you would not have half the perplexities and annoyances which now arise." Then you go on to say, "I think that many officers of the army are in doubt as to the meaning of the wording of the Mutiny Act and the Articles of War." As the Act has not been altered since then, I presume your Royal Highness is still of opinion that that is so?—Entirely so.

115. With regard to a question put to your Royal Highness about the constant revision of courts martial, you said, "I think that it is less from inexperience (of the officers) than from what I have explained just now, namely, the difficulty of understanding what is meant" by the Articles of War and the Mutiny Act; with reference to what my gallant friend said just now about the Articles of War, I would ask you, Sir, whether you agree with what Mr. Mowbray said before that same Commission in 1868, viz., that the Articles of War proceeding from the Crown, and framed under the authority of the Mutiny Act, correspond to what are now so common, namely, Orders in Council?—Yes, I agree to that; I take the same view.

116. And that they carry out in detail the powers conferred by the Mutiny Act?—Yes.

117. Of course the Articles of War must be made to conform to the Mutiny Act?—Yes, certainly, they ought to be made to conform to it; and wherever they do not conform to it, but where there is any discrepancy or possibility of misunderstanding, I said I thought they should be so arranged that there would be no possibility of any error on the part of courts martial.

118. The House of Commons of course has nothing to do with the Articles of War, but the House of Commons has the Mutiny Act each year submitted to it; and what I was pointing out was that, if the House of Commons has the power of altering the Mutiny Act, it has consequently, also in the same degree, the power of dealing with the Articles of War, because the Articles of War must follow upon the Mutiny Act?—Certainly, the Articles of War follow upon the Mutiny Act.

119. In fact, the Articles of War are, as the honourable baronet, the Member for Sunderland, explained, for the convenience of providing for an emergency either in time of peace or a time of war?—

Colonel *Loyd Lindsay*—continued.

war?—Yes, certainly; an emergency might arise in a time of peace, but it is not so likely, of course.

120. And for carrying out minor details, which are not put into the Act of Parliament?—Yes.

121. For that purpose your Royal Highness thinks it desirable that Articles of War should be preserved?—I should have thought so, because the changing of a permanent Act is a very serious matter; whereas, provided nothing appears in the Articles of War which is contrary to the Act, you have the power to make Articles of War, the necessity for which may arise from time to time, but which may not have been actually contemplated in this Act.

Colonel *Mure*.

122. I do not quite understand your Royal Highness with regard to the Articles of War, which are now practically to be embodied in this new Act. Do you suggest, Sir, that the existing Articles of War should still remain extant, or merely that the power should remain to make new Articles of War which should be, as it were, law existing without the special sanction of Parliament, outside this Act?—Speaking militarily, we are so accustomed in the army to the Mutiny Act and the Articles of War that I believe that arrangement was one that was clearly understood, and that met every emergency that might arise in order to carry out discipline; but, of course, if it is thought advisable to embody it all in one Act, I have no objection whatever, provided always that no right is given up and no elasticity is lost which exists at the present moment. I do not care at all which way it is, provided that we retain the same power of maintaining discipline which we have had under the Mutiny Act and the Articles of War.

Lord *Elcho*.

123. May I put this question to your Royal Highness as summarising your view upon that point. I gather from your Royal Highness's evidence that it is your opinion that, without interfering with the powers and rights of the Crown as hitherto exercised to issue Articles of War for the government of the army, it is desirable, with a view to the simplification of the present military code, that such of the existing Articles of War as relate to matters not dealt with or insufficiently dealt with in the Mutiny Act, should be incorporated in the proposed new code?—I quite agree in the desirability of simplification. But still, I maintain that there is a marked difference between military law and civil law. There is hardly a case of civil law that you cannot foresee; but in military law some emergencies may arise, particularly during the time of war, which it is really almost impossible to foresee, but which must be dealt with according to the circumstances of each particular case. Formerly, if a general officer in the field, or any officer commanding troops in the field, found a necessity for an Article of War to meet a special case, he would write home and say, "I must have some means of dealing with this difficulty which has arisen;" and then the Crown had the power, by putting it in an Article of War, to meet the emergency at once. If it is an Act of Parliament I do not quite see how you are to deal with it; because, although probably the officer would afterwards be supported, still he would for the time being be act-

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Lord *Elcho*—continued.

ing contrary to law; and I think it is very undesirable to leave an officer in that position, because it is a very painful and awkward one. Provided nothing is done to restrain him in that way by this new arrangement, I have no objection to it whatever. Therefore I say that we ought to keep the power of making Articles of War to meet such an emergency.

124. And that point, which your Royal Highness has just referred to, would be met by reserving all the rights and powers of the Crown as hitherto exercised?—Just so; but care must be taken that the first clause is so drawn that it does not restrain us from making an Article of War to meet an emergency.

General *Shute*.

125. I wish to ask your Royal Highness, with reference to the question put to you by my honourable friend the Member for Berkshire, whether you would see any objection to our having laid before us the Report and Scheme of the War Office Committee of last year on the re-drawing of the Mutiny Act?—That is in the hands of the Secretary of State, and I am not responsible for it. Of course if the Secretary of State has no objection to that Report being placed before this Committee I should have no objection; but it is entirely in his hands.

126. With reference to the latter part of your Royal Highness's evidence, I think we may understand that you think that if a careful Military Act were drawn up, perfectly clear and comprehensible (which many think the present one is not), there would be no difficulty found by the military authorities in drawing up Articles of War in strict conformity with it?—According to our notions of military law, we have always fancied that there was no difficulty in doing so; but I quite admit that the present Articles will require revision; I adhere very strongly to the opinion which I have already given; but I, as a soldier, am indifferent whether it is put in one form or another, provided always that the same power is maintained which now exists in the Mutiny Act and the Articles of War.

127. But for the sake of simplicity, with regard to the officers of the army, who are practical men, would it not now be more simple to the army generally to have the two things distinct; that is to say, a perfectly clear and simple and well drawn up Mutiny Act, and distinct Articles of War drawn upon that Mutiny Act, and exactly conformable to the Mutiny Act?—The whole army has been accustomed to that procedure, and everybody knows that habit is a great advantage; and under those circumstances I have no doubt that the generality of the officers of the army would think that was the simplest mode of dealing with the case; but, as I have already stated, I think that is a matter of detail which must be left to the Committee to deal with.

Mr. *Campbell-Bannerman*.

128. For administrative purposes do you see, Sir, any particular advantage in having Articles of War side by side with the Mutiny Act, and containing more or less identical provisions?—No; I think that a great deal that is now in the Articles of War might fairly appear in the Mutiny Act; but at the same time, so far as I understand the question, the Articles of War have given a certain amount of elasticity. That

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Mr. *Campbell-Bannerman*—continued.  
is my impression, and I believe it is the impression of the army. Provided that that elasticity is maintained, I do not see that it makes much difference; but I cannot too strongly impress upon the Committee the absolute necessity of keeping that elasticity, because without it I do not see how we are to deal with military incidents which may occur from time to time.

Mr. *John Holms*.

129. It is quite clear that the officers now understand the Mutiny Act and the Articles of War very well, because they have been accustomed to them. Supposing that the Mutiny Act and the Articles of War were combined into one Act, does your Royal Highness not think that it might be more simple for the soldiers, and that they could understand it better?—I do not think that a soldier would really pay much attention to that; he understands the leading features, but he does not go into those details.

Mr. *Hayter*.

130. Is your Royal Highness aware that in the new Army Discipline Bill, Clause 9, an important change is made in the punishment of officers and soldiers for treachery in the field, in disclosing the numbers, positions, magazines, preparations, or orders relating to operations in the field; and that by Clause 9 that conduct is punishable by imprisonment only, whereas by the present Mutiny Act, Clause 15, it is punishable by death?—I was not aware of that circumstance. I think I have explained that I have not gone very carefully into the various clauses.

131. Would your Royal Highness be kind enough to direct the attention of the military judge advocates to the fact that there is that change, because of course it is a most important

Mr. *Hayter*—continued.

change?—With reference to Colonel Hayter's question, I might perhaps say that of course the Adjutant General's Office, under my authority, like any other office, has various branches, and I cannot help thinking that probably the Committee would think it advisable, on questions of this sort, where there is minute detail, or considerable difference, that some officer of the department who is specially conversant with the matter should be examined. Colonel Greaves has great experience in these matters, and I could not suggest to the Committee anybody who can give better information than he can. General Carey, of the Judge Advocate General's Department, will also give valuable information. I think that those details would be perhaps better explained to the Committee by somebody who has to deal daily with these things than by myself, though I am ready to answer any question which is put to me.

Sir *Alexander Gordon*.

132. If we have the advantage of hearing your Royal Highness's evidence at a subsequent period, we should be glad to know whether in your opinion this Bill is one which we might accept?—I think I must have been misunderstood; I said in general terms that I had every reason to believe that everything, or nearly everything, that was in the Mutiny Act and the Articles of War is in this Bill; but I cannot pledge myself to every detail of the Bill, because I have not gone through it.

133. But when your Royal Highness comes again, perhaps you may then know what parts of the Bill are objected to by you, as the Field Marshal Commanding in Chief, and what are not?—Certainly; I shall be quite ready to do so.

Sir HENRY THRING, K.C.B., recalled; and further Examined.

Chairman.

Sir  
H. Thring,  
K.C.B.

134. You have heard what His Royal Highness the Field Marshal Commanding in Chief has said on the subject of preservation of the elastic power of making Articles of War in the future. Assuming the existing Articles of War to be incorporated in this Bill as you propose, will you explain to the Committee exactly what is your view of the reservation you have made in Clause 81 of the power of making Articles of War; and whether that power is more restrictive than the existing powers in the Mutiny Act with reference to Articles of War?—I find that there is a slight mistake (which does not affect what I am going to say at all) in the reservation of the power. In the proviso to Clause 81 the words "within the United Kingdom of Great Britain and Ireland, or within the British Isles," ought to be omitted, having regard to Article 159 of the Articles of War; I think it ought to run in this way: "That no person shall, by Articles of War, be subject." As the clause stands, I answer without hesitation

Chairman—continued.

that the power is more widely expressed there than it is in the original Act.

135. What I understand you to say is, that in this Draft Bill you have reserved to Her Majesty the power to make Articles of War in as ample a manner as Her Majesty now possesses that power?—Certainly; I say that, so far as it is altered at all, it is altered in the sense of amplification; I believe the clause is almost verbatim with the provision of the Mutiny Act, but you will find, as above stated, that in drawing the clause of the Draft Bill I omitted to take notice of Article of War 159.

136. Your attention is, at all events, in this Bill, to reserve to the Crown as ample powers to make Articles of War in the future as the Crown possesses at this time?—Certainly; I intend absolutely to photograph the existing law with respect to the powers of the Crown to make Articles of War.

Mr. JAMES CORNELIUS O'DOWD, called in; and Examined.

Chairman.

Mr.  
O'Dowd.

136\*. You are Deputy Judge Advocate General?—I am.

137. You are aware, of course, of the objects

Chairman—continued.

for which this Committee has been appointed, and I think you were present when I read to His Royal Highness the Field Marshal Commanding in



*Chairman—continued.*

in Chief, the passage from the Report of the Royal Commission on Courts Martial of 1869, upon which they founded the recommendation that the Mutiny Act and the Articles of War should be revised?—Yes.

138. Is it your opinion, from your experience of these matters, that the existing condition of the Mutiny Act and the Articles of War is unsatisfactory?—Very unsatisfactory.

139. Would you state to the Committee the grounds which you have for forming that opinion?—I speak with reference to the practical working, of which alone I am qualified to speak. I have been for nine years in my present office, and I have probably read from 17,000 to 18,000 courts martial in that time; and I find that officers of all grades, not only junior officers, but some of the senior officers of the service, are very often perplexed as to the manner in which they should administer military law; and they have to make very frequent references to our office for advice upon the subject.

140. Do you find that that arises from a certain confusion, which in fact is very apparent, from the enumeration of various offences both in the Mutiny Act and in the Articles of War?—I think to some extent it is attributable to that.

141. I observe in the Paper that has been laid before the Committee, for instance, that under the first head, "Misconduct on Service," a number of the offences contained under that head are dealt with in the 15th section of the Mutiny Act, and also in some dozen Articles of War?—Yes.

142. The same things are practically dealt with in those different articles, and not always in the same language?—As a matter of fact, some of the offences which, according to the Articles of War, are made punishable with death, or penal servitude, are not in the present Mutiny Act so punishable; and, inasmuch as the present Mutiny Act must necessarily override the Articles of War when they come in conflict, or are even inconsistent, those Articles are really a nullity. But with regard to your general question, I think that some of the difficulties that we have to meet now arise from the repetition, and from the repetition not always being in the same terms.

143. Should you be favourable also to the idea of separating what may be called the disciplinary clauses from the administrative clauses both in the Mutiny Act and in the Articles of War?—I think it is the first step desirable to clear the ground towards the carrying out of the objects which the Royal Commission of 1869 suggested, namely, simplifying the law, and making it intelligible to those who administer it.

144. That is to say, that matters of a penal character should be sifted out from matters of a purely administrative character?—I would rather draw the distinction in this way: that matters which are administered by military tribunals should be separated from matters administered by other sources of authority. As an example, there are questions of pay, and furlough, and billets, which are regulated by the War Office, because civilian interests, as well as military interests, are involved in them; I would put them entirely away from that portion of the military code which is for the guidance of officers in administering, what I call, purely military law.

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*Chairman—continued.*

145. That would be the first step in the direction of separating the discipline from the administration of the army?—Quite so.

146. I suppose it would not be very material whether, in the consolidation of these things, you put the two heads into one Bill, or whether you kept them in separate Bills?—Provided that you keep all the clauses relating to discipline together, I can see no objection.

147. In point of fact, it would be of the same convenience, I suppose (and perhaps even in a higher degree as it affects non-professional tribunals) to consolidate the military law as it is to consolidate the civil law in regard to its administration?—Quite so.

148. You, I think, rather favour the classifying of offences according to their punishments?—I think it is very desirable, for this reason: one of the few merits of the present Mutiny Act is that it concentrates in one section, Section 15, all the crimes to which the punishment of death is applicable; the consequence of that is, that when officers sitting on courts martial are somewhat in doubt as to the extent of their power, they have only to refer to Section 15; and if they find that the charge upon which the prisoner before them is being tried does not fall within the category of offences laid down in Section 15, they at once see that they have no power to award the punishment of death or penal servitude.

149. But is there not also some convenience in finding gathered all together offences of the same character, even if offences of the same character have different punishments; for instance, if you find together all the offences that have to do with mutiny, and all the offences that have to do with desertion, and all the offences that have to do with other classes of crime, is there not some convenience in an officer being able to look for them under particular heads?—I think that the other plan would be more likely to avoid complication; because, although the Mutiny Act has that particular merit, I think the Articles of War have not that merit. The Articles of War enumerate crimes some of which are cognizable by superior courts only; and then again come certain crimes which are cognizable by inferior courts, and then a further number which are again cognizable only by superior courts. I very frequently get letters from officers asking me for an opinion upon inferior courts martial, which have been wrongly assembled to try offences which should only be tried by a superior court. They get into confusion about it, and justice is sometimes really defeated, as I think, from want of proper arrangements. If those crimes were arranged according to their magnitude, and the kind of court by which they ought to be tried, I think we should not have these cases of miscarriage of justice.

150. Do you happen to know how long it is since a new Article of War was made; I am not speaking of alterations and amendments to suit the Mutiny Act?—I do not think there has been a new one made in my time.

151. I have been told that it is 50 years ago since there was a new one made?—We have had frequently to make alterations in an article, and we have expunged Articles of War as unnecessary; but I do not think in my time a new Article of War has been framed.

152. Of course you are obliged to modify an Article

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Article of War with every change in the Mutiny Act?—Yes.

153. I will not, at present, ask you any questions on matters of detail, as we are wishing to form an opinion in the first place as to the general scheme of the Bill; but are there any other general observations which you desire to make?—There is one with reference to what his Royal Highness has been examined upon. It occurs to me that a good deal of difficulty as regards that particular question (which I suppose is a question of principle), with relation to the Articles of War might be got over in this way. As I understand his Royal Highness and the officers of the head-quarter staff, what they wish for in regard to Articles of War is, that they should have very large powers, elastic powers as his Royal Highness said, for operations in the field. In Sir Henry Thring's Draft Bill, he allows capital punishment to be inflicted for several offences in the field, and he specifies those offences. I do not think that his list is exhaustive, and I do not think that it can possibly be made exhaustive; and, therefore, so far as my opinion goes, I should like to see the clause relating to the punishment of death comprise all those crimes which it may be thought proper to allow such a punishment to be awarded for in time of peace; and a general clause, which should be only in operation in the field for all offences in the field; that is to say, all offences that would tend to injure the success of the troops.

154. What I understand you then to say is, that you would extend the power of making Articles of War in the field before the enemy as part of the Statute?—Yes.

155. That would be giving a power which does not at present exist, would it not?—It practically exists in a great many instances.

156. But there is at present no general power of making Articles of War carrying with them a capital sentence, beyond that which is specified in the Mutiny Act, is there?—I do not so much speak of putting it in an Article of War. I should make it part of the Mutiny Act with this object. In the field I take it that individual rights must yield to public exigencies, and that crimes are not so much judged by their moral guilt as by their effect upon the military operations that are going on; and for that purpose, and for that purpose only, I take it that already the Commander in Chief of an army in the field has very considerable powers. I would make those powers statutory; but upon his authority it must be shown that the offences with regard to which he exercises them are offences of a nature likely to interfere with the success of his operations.

157. I presume you would say that that already exists as, what I may call, a common martial law authority in a general in the field?—Something of that kind. Supposing, for a moment, that a general in the field has had occasion to take some very strong steps in enforcing discipline, I think myself that if he came home he would be in a stronger position before the public in being able to say, "It is quite true I have done something quite out of the way, but I have the authority of Parliament for doing it."

158. I do not wish to pursue this in detail at present, but I presume you would say that a general in the field had a very extensive common

*Chairman—continued.*

martial law authority to execute what was necessary for the discipline of the army; that he will have still, will he not?—What I was principally aiming at is with reference to Sir Henry Thring's classification of offences in the field, which I do not think, as I said before, can possibly be exhaustive, and therefore had better not be put in at all.

159. You would rather leave it to the general powers which may be considered, without legislation, to belong to a general in the field?—I would put it, that an offence committed in time of war or on active service should be punishable with death in the event of its being an offence tending to injure the success of the Queen's troops, or to aid the enemy. The court would judge of its nature.

160. That would be a new legislative enactment, would it not?—It would be a new legislative enactment to a certain extent. The power exists largely at present under the Act.

161. Referring to the 80th clause of Sir Henry Thring's Bill, which is what is called the provost marshal clause, does that differ in any way from the existing law, or is there any existing law with reference to armies in the field which gives a larger power than is there given?—No, I think not.

162. Whatever larger powers there may be (and everybody admits that in the field there must be larger powers) rests upon what may be called the usages of war, and not upon any legislative enactment or any Article of War; is not that so?—Yes. I have never had occasion to look very closely into it, but, speaking off-hand, I say that this is a power entirely of itself; and, of course, if it is conferred now by Statute it becomes a statutory power.

163. It is an Article of War made under the authority of a Statute, I presume?—Yes.

*Mr. Staveley Hill.*

164. Have you read or considered the mode in which the punishments are enumerated in this Bill, as compared with the way in which it is done in the Naval Discipline Act?—I have not lately had occasion to look at the Naval Discipline Act, so that I am afraid I am hardly in a position to answer that question.

*Lord Elcho.*

165. Your attention has naturally been turned to this matter before; have you ever gone so far, in considering this matter, as to draw up the heads or form of any Bill upon this question for the amendment of the law?—I have.

166. Under instructions?—Yes, under instructions from the Secretary of State.

167. Does that proposed Bill of yours differ materially in principle from the Bill which we are now considering?—It differs from it in this respect; that my Bill is very much shorter, and very much closer. It arranges the offences in the manner that I have just stated, according to the amount of punishment; it provides in a very short way for the creation of tribunals to administer the law, for the execution of sentences; and I have gone upon the principle of taking all the jurisdiction in the Act itself, but leaving the manner in which those powers should be exercised, and all the details of procedure, and many regulations that are in the Bill of Sir Henry Thring, to be done by the Executive in the Articles

Lord *Elcho*—continued.

Articles of War, or the Queen's Regulations; my reasons for doing so being that we have always gone upon the assumption that the new Military Discipline Bill would be a permanent Bill, and, therefore, not capable of being revised with facility every year. I therefore thought it more advisable to make it very general, except in the matter of jurisdiction. For that reason, I left a great deal to be arranged by the Executive from time to time by warrant; for instance, the summoning of courts martial. The Bill provides that the Queen may give authority to officers to call courts martial, and that the warrants giving that authority may also authorise them to confirm them, and commute the sentences, and deal with them generally; but as to who are to get the warrants, or what description of warrants are to be issued in particular cases, I have left very wide discretion to the Executive.

168. But as regards the main principle which has hitherto engaged the attention of this Committee, that is to say, the simplification, codification, and combination of the Articles of War with the Mutiny Act where possible and desirable, the principle of your Bill is the same as the principle of the Bill which is now before the Committee?—My Bill was certainly very much shorter.

169. But its object and intentions were the same so far?—Yes.

170. Had you prepared your Bill to the extent that the clauses were numbered so that one could judge of the number of clauses in the two respective Bills?—Yes, it was in this stage: I prepared the Bill for submission to the Secretary of State, not as an instance of what legislation ought to be, but more as a method of showing how the present law, with very few changes, might be consolidated, and very clearly and briefly expressed, so as to be understood, not only by the officers who have to sit on courts martial to administer it, but even I think by the private soldiers who have to obey it.

171. Was that done when you first went to the office, or recently?—Ever since I came to my office in 1869 many of us have been making attempts to rearrange and codify the Mutiny Act; but, I think, before Sir Henry Thring took up this draft, the draft that I prepared was the last.

172. Do you suppose that there would be any objection on the part of the authorities to your allowing that draft Bill of yours to be laid before this Committee?—I suppose that, strictly speaking, it is the property of the Secretary of State, to whom I submitted it.

173. You say that it is very much shorter; this Bill has 112 clauses, may I ask how many your Bill had?—Twenty clauses.

174. And you think that in those 20 clauses you dealt with the whole subject that is dealt with in 112 clauses here?—Subject to more careful and final revision, I think so. It dealt purely with questions of discipline.

175. You did not touch questions of administration?—No, I entirely excluded them.

176. Have you prepared any Bill with reference to administration?—No.

177. Having looked at the two Bills, subject of course to matters of detail, you are of opinion that the Bill which you drafted in 20 clauses contains pretty nearly the same provisions that are dealt with in this Bill in 112 clauses?—I think so, speaking roughly.

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Colonel *Lloyd Lindsay*.

178. If the Mutiny Act was shorter, I presume that the Articles of War would be longer?—Not necessarily.

Lord *Elcho*.

179. As I understand from you, your Bill embodies also the Articles of War bearing upon the various matters contained in the Mutiny Act?—Yes.

180. So that your Bill is, in fact, a consolidation of the two?—It is a consolidation of the two.

Mr. *Campbell-Bannerman*.

181. Do you think that it would be desirable in forming a new code to repeat all the somewhat cumbrous, and involved, and confused phraseology which is used in some cases in the old law, or would you rather simplify it, and modernise it?—I find so much confusion existing under the old law that I should rather like to avoid it where I could; I would go as far as that.

Mr. *Hayter*.

182. Have you any suggestions to offer to the Committee with reference to the mode of taking evidence before military tribunals?—I was going to observe, with regard to Sir Henry Thring's draft, that he has omitted what appeared to me to be a very valuable provision contained in an indirect way in the present Act. Sir Henry Thring has a clause stating that certain documents are to be made legal evidence. That is a very useful clause, so far as it goes, but it does not lay down any general rule as to the principle upon which evidence before a court martial is to be admitted or rejected. We had a case of doubt upon that subject some few years ago, when the Indian Evidence Act was passed by the Indian Legislature. That Act stated that it was to apply to all courts, including courts martial; and as that law of evidence differed in some respects from the English law of evidence, it became a question how far that law was to prevail in guiding courts martial in India in the admission or rejection of evidence. The whole question seemed so doubtful that we were recommended to put, and we did put, into the 101st section of the Mutiny Act, a proviso to the effect that courts martial should, as regards the admission or rejection of evidence, be governed not by any local legislation but by the law of England. I confess that I should very much like to see in this draft a distinct provision that courts martial are to be guided by the law of evidence then in force in the courts of criminal judicature in England. It is the practice at present. We should certainly not uphold a court martial where any very grave departure from that law took place, and I should like to see it a matter of distinct enactment.

183. Have you any observations to make with reference to the advantage of legal practitioners appearing on behalf of the prosecutor or of the prisoner on district and general court martial?—Nothing has occurred in my experience which would enable me to make any useful suggestion to the Committee on that subject; but I have an opinion about it, and my opinion is that as a rule it is better to be without it. Legal assistance would be only available to an officer or to a person whose means enabled him to retain counsel. The ordinary criminal in the army is the ordinary private soldier, beyond whose reach legal assistance

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assistance would be; and, I think, I would rather see no legal men on either side in these courts.

184. Not having much attention to it you prefer to leave things as they are; you have no distinct suggestion to make in the way of change?—No, my experience does not enable me to make any useful suggestion upon that point.

185. Do you see any necessity for the writing out all the questions in the way that is done at present and passing them through the president?—That is a very difficult question. The proceedings must be kept for confirmation and subsequent review in our office, and how you are to put them on record without the present process I do not know. It certainly wastes a great deal of time, and in the simple cases I should say that it is quite unnecessary, such, for instance, as cases of insubordination. In any complicated case before a general court martial, if a shorthand writer is applied for, the War Office always allow us to employ one; and, in that way, a great deal of time is saved. If a court martial lasts over several days, the fact of the questions being put *viva voce*, and taken down by a shorthand writer, whose transcript is a record of the proceedings, saves a great deal of time, and I should rather say that it assists the ends of justice.

Mr. Merewether.

186. With regard to the language of the Mutiny Act, I do not understand you as desiring to change unobjectionable words which have the advantage of being familiar to the officers and to those who have to do with them?—I rather meant to convey that many of the expressions are very inconvenient expressions; that they are unnecessarily prolix, and beyond their being customary there is really nothing whatever to recommend them. It is language which nobody, if he were framing a Mutiny Act for the first time, would think of putting into it.

187. But your preference would be rather to curtail than to alter any general words which are well understood at present?—Where a word is popularly understood I should not be disposed to change it.

188. Are you aware that practically no Article of War has been added since the year before the Battle of Waterloo?—I am not aware of it.

189. Did you ever hear of an Article of War being added?—Not in my time..

Sir HENRY THRING, K.C.B., re-called; and further Examined.

Sir  
H. Thring,  
K.C.B.

Sir Alexander Gordon.

195. CAN you explain that?—I do not know why those words are inserted; but the Articles of War, properly so speaking, made under the 1st section of the Act, cannot apply to civilians, because Her Majesty has only power to make Articles of War for persons in the army. On the other hand, by the Mutiny Act, a very considerable class of persons indeed, whom I should call civilians, are made subject to the Act, for example, followers of the army; and also under one of the clauses of the Mutiny Act, War Office clerks employed with the army and other persons employed with the army are made subject to the Mutiny Act; but they cannot be made subject to the Articles of War under the

Major O'Beirne.

190. Do you not think that the forms, constitution, and procedure of general courts martial could be considerably altered in the interests of justice; could they be assimilated in any way to the form of trial that takes place in a civil court?—I am rather at a loss to point out how you could assimilate them beyond seeing that the evidence was received in the proper way, and that prisoners had every opportunity of offering such defence as they could.

191. Could not an officer have the power of appeal to a higher court?—I think that is a most important question, so that any illegality in a court martial should be corrected by some well defined and ascertained machinery.

192. Do you not think also that an officer when he is tried by general court martial should have the power of choosing the place where he may be tried; in case he shows good grounds for the allegation, his case would be prejudiced by his being tried in any particular place, in the same way as a civilian has the power of choosing the place where he is to be tried, if he can prove that he would not get a fair trial in a particular locality?—A civilian would be tried by a jury.

Sir Alexander Gordon.

193. You are aware that civilians, who are temporarily in the service of the army, are liable to all the detailed provisions of the Articles of War and the Mutiny Act, which soldiers only know by a gradual process, and which are read to them every three months that they may have no excuse for not knowing them; but followers of the army are subject to the penalties of the Mutiny Act and the Articles of War for any trivial offence which they may commit, not knowing those penalties?—A case of that kind has very seldom arisen; but one occurred the other day, and it was very doubtful whether a person who was put within the operation of military law by a general officer abroad was really within this category, and we telegraphed to the general officer instructions to release the man; but it would be a question of construction of the 2nd clause in the Mutiny Act as to whether a man came within that category or not.

194. You stated that it was only recently that any question of that kind had arisen, but that arises from the circumstance that the Articles of War have only been made applicable to civilians within the last two years, I presume?—That may be so.

Sir Alexander Gordon—continued.

power contained in Clause 1, because it only applies to the army; I have pointed out that there was an almost insuperable difficulty in construing the Act with those clauses. Therefore, in drafting this Bill for the consideration of the Committee, I have made the law plain; but of course it will be for the Committee to decide whether it is so or not.

Chairman.

196. The honourable and gallant Member's point is that, though the first clause confines the Articles of War strictly to the army, the beginning of the second clause applies the Articles of War to other people too?—That is true, but

*Chairman—continued.*

but I have already said that the provision is inexplicable. The law is so intricate that it is almost impossible to understand it; but if it will not trouble the Committee too much I will endeavour to explain it. It is a legal argument. Starting with Section 1 of the Mutiny Act, it clearly only applies to Her Majesty's army. The army is not defined, but it means in its ordinary application what we call officers

*Chairman—continued.*

and soldiers; it does not include the militia and volunteers, and perhaps other forces. All the provisions of this Act are to apply to all persons, but then it enumerates the persons to whom it is to apply; and therefore I say that, unless those particular persons are enumerated in Section 2, Her Majesty cannot by Section 1 make Articles of War apply to them.

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Mr. JAMES CORNELIUS O'DOWD, re-called; and further Examined.

*The Judge Advocate General.*

197. You can explain, I think, how it was that the enactment as to the Articles of War was inserted two years ago in the 2nd section?—I can only speak from recollection, but I think it was for the purpose of replacing Article 187, which was then expunged; and I think that for some reason it was thought better to make it statutory; and Article 187, as you see, was in substance transferred to Section 2 of the Mutiny Act.

*Mr. Merewether.*

198. Was it not to avoid any difficulty about persons simply carrying baggage from one town to another for troops?—We should always tell them not to try a person carrying baggage under the Mutiny Act.

Mr.  
O'Dowd.

Major General ROBERT CAREY, C.B., called in; and Examined.

*Chairman.*

199. WHAT is the official position that you occupy?—I am Deputy Judge Advocate.

200. You are probably acquainted with the object for which this Committee has been appointed, namely, to consider the Mutiny Act and the Articles of War, and the laws relating to the army generally?—I am.

201. I think you were present when his Royal Highness the Field Marshal Commanding in Chief gave his evidence?—I was.

202. Should you agree generally in the evidence given by his Royal Highness and the other witnesses who have been examined to-day, that it is desirable that the Mutiny Act and the Articles of War should be revised and simplified?—Certainly.

203. You would think, from your experience in these matters, that their present condition is not satisfactory?—I think there is a great deal that requires to be re-arranged, and some of the language which requires to be simplified; but not much beyond that, and I think that putting the Articles of War into an Act of Parliament will not be advantageous to the Service, unless, as his Royal Highness remarked, the full powers can be retained that the Crown has now under the provisions of the Mutiny Act; but I do not quite see how that can be done. The whole of it depends to my mind upon the interpretation of the 81st clause in the Army Discipline Bill.

204. Assuming for the moment that the 81st clause is or should be made identical with the present power of making Articles of War, then the main object that you would desire would be accomplished, would it not?—The fact is that I cannot see how it can be made identical in that way; the 81st clause of the Army Discipline Act says, "Provided that no person within the United Kingdom of Great Britain and Ireland or within the British Isles, shall by Articles of War be subject to suffer any punishment extending to life or limb," and so on; and that is taken from the first clause of the Mutiny Act verbatim. When this was in the first clause of the Mutiny Act it answered there a special and very useful pur-

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*Chairman—continued.*

pose, it laid down a basis or limit, and the Mutiny Act, as we soldiers read it, gave power to the Crown to make, within those limits, Articles of War for the better government of Her Majesty's forces. Then in those Articles of War, the Crown dealt with all discipline, and specified in detail all crimes, and the penalties which it thought right to affix to them.

205. You mean the Articles of War, and not the Mutiny Act?—They were not all detailed in the Mutiny Act. They were detailed in the Articles of War.

206. Do you mean to say that the crimes were not specified in the Mutiny Act?—My argument is, that the crimes were not detailed in the Mutiny Act as crimes, in the same way as they are detailed in the Articles of War. The Mutiny Act said that the Crown might make Articles of War for the better government of Her Majesty's forces, and then it gave a limit, and provided that death and penal servitude could not be awarded in the United Kingdom except for crimes which were so specially named. Therefore the 15th clause detailed those crimes as the crimes which were so specially named to which the penalties of death and penal servitude were applicable in Great Britain, but it did not detail those crimes as all the crimes for which the punishments of death and penal servitude could be inflicted anywhere else. That is where perhaps something like repetition occurs, though I do not think it is really repetition. The Articles of War detail all crimes, naming others besides those for which death and penal servitude can be given; and that gives the elasticity that I think his Royal Highness remarked upon; so that abroad, or in war time, we have the power, under the Articles of War, to sentence men to death and penal servitude when circumstances render it necessary.

207. If that power is retained, you would be satisfied?—Certainly; but the object is to simplify the law, and we have got a distinct clause in the beginning of this Discipline Bill, that every person subject to military law, when on active

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*Chairman—continued.*

active service, if he does so and so, shall suffer death or a less penalty, or in other cases shall suffer punishment not exceeding imprisonment. Those crimes are minutely detailed in the Discipline Act, and so far I have no doubt that they are perfectly sufficient for every general case. But, as it says, on "active service," which I read to mean in war time, I do not see how this provision, or any provision in an Article of War, can say that the Crown may give in war time, for any of those same crimes, a punishment exceeding imprisonment, the more so as Clause 46 (2) seems to say that nothing higher may be given in these cases, which makes the limit still stronger.

208. The character of your objection is, that you think that the draft Bill is too restrictive on the power of the Crown in time of war?—I think it is not elastic enough.

209. That means the same thing; your objection, then, is not directed to the operation of the Bill in times of peace, but you are afraid that the Bill in its present form will be too restrictive in times of war?—I think that if you had a Bill like this a general officer would have to act contrary to the written law, and to take upon himself really the responsibility of martial law; he could not expect a court martial to award a sentence beyond that so clearly specified.

210. Your objection to the Bill is to its operation in time of war, and not in time of peace?—Quite so; not in time of peace.

211. You think the Bill is not sufficiently elastic in reference to time of war; you would like to see a larger and more elastic power in time of war reserved to the Crown than in your opinion is given in the Bill?—Certainly.

212. And if that were secured, then your objection to the Bill would be removed?—To that part of it, certainly.

213. You do not maintain, I suppose, that there is, or ever has been, any power in the Crown by the Articles of War to create new offences punishable by death in time of peace?—The power of the Crown under the Mutiny Act is that the Articles of War may name any crime as punishable by death and penal servitude except in the United Kingdom, where they are restricted to those named in the 15th clause.

214. I would rather not go into the question of law with you upon that point, because perhaps we should not be agreed. Your objection to this Bill is that by Section 81, and indeed by the general scope of the Bill, the power of the Crown in respect of authority in time of war will be more restricted than it is at present?—Yes, but it depends upon the interpretation put upon the 81st clause.

215. If it were made clear that the power of the Crown would be no more restricted than it is at present in time of war, your objection would be removed?—So far as the principle of the Bill goes, certainly.

216. Are there any other objections that occur to you, beyond the restriction of the power of the Crown in time of war?—It is difficult to form an opinion on part of a scheme, but I think it is much more convenient to the army to have the Mutiny Act and the Articles of War in the shape in which they are now, supposing them to be simplified and re-arranged; because the "Discipline Act" is only the beginning, and when you have got the "Army Regulation Bill"

*Chairman—continued.*

and "the new Articles of War," whatever they are, and "the new Regulations," I do not think that we shall find in the end that we have condensed or simplified anything; whereas our present Mutiny Act and our present Articles of War answer separate purposes; and if the clauses were re-arranged and altered in language, you would have exactly what the army wants.

217. Allow me to test that. Will you kindly look, for instance, at the heading in Sir Henry Thring's draft, which shows the provisions with reference to misconduct on service; if you look at the left-hand column, you will see a number of things mentioned in the Mutiny Act, and a number of things of a very similar character mentioned in the Articles of War, there being about a dozen Articles of War which deal with very much the same matter; how would you propose to re-cast that?—I would keep the principle of the Mutiny Act as we have it now; that Articles of War might be made, provided they did not exceed the limits laid down in the Mutiny Act; that within Great Britain and Ireland certain crimes should not be punished with death and penal servitude, and that all punishments should conform to the limits of the Act.

218. If you take, for instance, the heading of "Misconduct on Service," you will see that that is dealt with in the 15th section of the Mutiny Act, and that it is also dealt with in about a dozen of the Articles of War; how would you propose to simplify that?—I think that the wording might be made to run the same, both in the Mutiny Act and in the Articles of War.

219. Would you deal with misconduct on active service both in the Mutiny Act and in the Articles of War still, or would you consolidate it into the Mutiny Act, or would you consolidate it into the Articles of War?—I should not call it misconduct on service. I think those headings are what confuse us. The Mutiny Act does not put any headings of that sort.

220. Take this, for instance: "If any person shall hold correspondence with or give advice or intelligence to any rebel or enemy;" that is in the 15th section of the Mutiny Act. Then in the 51st Article of War, you have this: "Any officer or soldier who shall hold correspondence with or give intelligence to the enemy directly or indirectly, or relieve with money, victuals, or ammunition, or knowingly harbour or protect an enemy." Those two things are substantially the same; would you keep them both in the Mutiny Act and in the 51st Article of War, or would you put them together in either the one or the other?—If you have a Mutiny Act for general limitation and Articles of War for detail, I think you must keep them in both.

221. Would you keep them in both?—Yes, certainly for that purpose.

222. Then do you mean that you would make the two identical in their wording?—I think they had better be the same. The reason of the difference in their wording is owing to the many changes which have taken place in this book in the many years that it has existed.

223. If you would have them identical in their wording, what is the object of the repetition?—The elasticity would be left to the Articles of War, and whilst the Mutiny Act would limit those crimes to certain penalties, at certain places, the Articles of War would settle those crimes and other crimes according to circumstances.

224. Is

*Chairman—continued.*

224. Is your notion of simplifying to repeat the same thing in identical words; and if you repeat the same thing in identical words, how do you retain elasticity?—You repeat them in identical words, but for a different purpose. The Mutiny Act is the basis on which we start. The Articles of War are the details which carry out the limits which Parliament allows to the Articles of War.

225. By which do you think that a court martial should govern itself; by the Articles of War or by the Mutiny Act?—By the Mutiny Act, certainly, if there is any contradiction in them; there should not be any contradiction.

226. But there could be no contradiction if the Articles of War are to be a mere repetition of the Mutiny Act?—Taking this provision, for instance: "Provided that no person within the United Kingdom of Great Britain and Ireland, or within the British Isles, shall by such Articles of War be subject to suffer any punishment extending to life or limb, or to be kept in penal servitude, except for crimes which are by this Act expressly made liable to such punishments as aforesaid." That limits the punishment for those crimes that are mentioned in the Mutiny Act to the United Kingdom; but we have always held that that did not limit the punishment of death and penal servitude out of the United Kingdom in time of war; and therefore in the Articles of War we find other crimes, which are not named here, which have all along had the penalty of death and penal servitude attached to them.

227. It is proposed in this Bill, is it not, that these Articles of War shall be incorporated in the Bill?—Yes, I believe so.

228. So long as there is the elasticity that you require reserved in future for alteration or extension, there would be no harm, would there, in incorporating the existing Articles of War in the Bill?—I think there would, and I think his Royal Highness, if I recollect rightly, was pleased to make a remark upon that point himself. The 7th clause of the Army Discipline Bill says that, "Every person subject to military law who when on active service (1) Without orders from his superior officer leaves the ranks in order to secure prisoners or horses, or on pretence of taking wounded officers or men to the rear; or, (2) Without orders from his superior officer, leaves his guard, picquet, or post; or (3) Is taken prisoner by want of due precaution or through disobedience of orders; or, (4) Without good and sufficient cause gives a parole or watchword different from what he received; or, (5) Without due authority sends a flag of truce to the enemy, or holds any correspondence with the enemy, shall be liable to suffer any punishment not exceeding imprisonment." When that was left in Articles of War, it could be altered by the Crown on an emergency, and as his Royal Highness pointed out, if a general officer abroad wrote and said that he wanted more power, that those crimes were getting beyond his control with that punishment, the Articles of War could be altered. If you put it in the Discipline Act I cannot see how any general officer could maintain discipline and could get a court martial to sentence men to death for those crimes, or anything that he thought necessary to keep the service going.

229. What you would desire would be that there should be somewhere or other in the Bill a

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*Chairman—continued.*

power to the Crown to make a valid Article of War which should extend the punishment for those offences in time of war?—If that was done of course it would be all that was wanted; but, at the same time, I cannot quite understand how it would answer to put in some other part of the Act that in time of war the punishment may be extended, when we specially put in the Act that in time of war they are to be so and so. The fact of bringing crimes and punishments into a "Discipline Act of Parliament," it appears to me, does away with all the good that there is in the Articles of War.

230. What you desire is that the elastic power of which his Royal Highness spoke should be in some way or other preserved in this Bill?—Yes, that is the power I want to see preserved.

231. Is there any other objection that you see, apart from that?—The great object, I believe, is simplification, and that there should not be unnecessary repetition. If we put into the Discipline Act every crime that we have got here, "before the enemy," "on service," and so on, and then if we may make Articles of War to extend those punishments in time of war, it strikes me that we must repeat those crimes in the Articles of War giving punishments different to those which are laid down here; and that appears to me a repetition and contradiction which is very undesirable.

232. That would not be a case of very frequent occurrence, nor would it apply probably to a great many crimes; you do not contemplate that the necessity for the manufacture of new Articles of War would arise frequently, do you?—No; but one can never tell when or how they will arise. There are crimes enough, and those crimes are not put, because we want to invent crimes, but so that soldiers may see the duties that they have undertaken, and what they are liable to. It appears to me that those crimes should be punishable according to the degree and nature of the offence in time of war rather than under a rigid rule as laid down in the Act of Parliament.

233. Then I gather that the purport of your evidence generally is that you wish to have great care taken to preserve the elasticity of the authority of making Articles of War in time of war?—That is what is necessary; and any Act that we get instead of the present one should be simpler for officers to read; because it is not so much for lawyers as it is for the officers of the army to read.

234. I understand your notion of simplification to be to repeat in the Articles of War exactly the same words that are found in the Mutiny Act?—That is not what I mean. Of course there is repetition to a certain extent, but I think there is very little repetition except what is necessary. What appears to be repetition in the Articles of War is because the Mutiny Act generally provides for Great Britain, whereas the Articles of War apply abroad and in time of war; but there is less repetition or contradiction I think in this way than there would be in the other.

235. In the other there may be faults, but there is no repetition; the same thing is not repeated twice over in this Bill. It may be that the Bill is wrong in other respects, but there is no case of repetition; when a thing is mentioned once it is mentioned once and for all; whereas on the plan which you seem to advocate, you must

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have the same thing mentioned in the Mutiny Act, and then mentioned again in the same words in the Articles of War?—But for different purposes. One is the limit that Parliament imposes upon the Mutiny Act, and the other is the power which the Crown has within those limits. We have always found the 15th section of the Mutiny Act very useful in that way, and I think Mr. O'Dowd also said that it was very useful to look at when a limit is required to be defined.

236. Is there any objection which you would desire to bring before the Committee?—No, I do not know that I have anything further to suggest.

Mr. Stareley Hill.

237. A great many of the clauses turn upon the words "active service;" have you any definition of active service?—I should call it "war time;" I do not know anything else to say for it.

238. Taking, for instance, the troops now in Lancashire, do you call them on active service?—No, that is in aid of the civil power.

239. Let me take the instance of the Indian troops at Malta in time of peace; are they on active service?—They are not on active service. I should consider that war must be declared before there is any active service.

240. Then you restrict the words active service to service being done by troops in time of war in the face of the enemy?—If troops went out in time of war, whether in the face of the enemy or not, I should call that active service. I should call any troops embarking after a declaration of war, or embarking for the Cape where war is going on now, on active service; but I should not call anyone on active service who was assisting the civil power in apprehending a murderer, or in suppressing riots, as they may be doing in Lancashire now.

241. Or any person who, under the apprehension of war, was going to what might be supposing to be the seat of war when war broke out?—That is getting to a margin. I am not quite competent to decide when a state of war would begin.

Lord Elcho.

242. Is there any point with reference to the arrangements in the Bill that you think as a matter of principle might be improved upon?—I have said that I liked the Mutiny Act best, and I like it best in this way; I think that the Mutiny Act and the Articles of War each serve a separate purpose. I look upon our Mutiny Act as being a book which contains all the duties that soldiers owe to the civil power; it also explains to civilians and to soldiers all the powers that magistrates have over them in relation to military and civil matters; and it also contains the general limits that Parliament allows to the Crown. The Mutiny Act in that way becomes a very valuable book to the officers who administer the army. I think it is a great advantage that all the clauses should be as much together as possible, instead of being separated as proposed, each clause dealing with a whole subject. It is a very great advantage to the commanding officers or to the adjutant general to see what crimes a soldier may commit, and how he may be punished, and then to see in the same clause what the civil power can do, and what duty we owe the civil power; I think it is much bet-

Lord Elcho—continued.

ter to keep them together. Then the Articles of War, which do not contain anything about the civil power, would as now form a book for reference more for regimental officers and for courts martial, and one that is in daily use amongst the junior branches of the army. I do not say that they ought not to study the other two, but both are well understood; they contain everything that we want, although it is a little confused; and keeping the principle I think they are a most useful thing for us. Of course, I have not the slightest objection to see them codified into one, but I want to see the law simplified, and I have great doubts myself whether we shall find in the end that it does simplify it. Still it is a difficult thing to say whether it will be simplified or not, until it is done.

243. Assuming that it was thought desirable to combine the Articles of War and the Mutiny Act as far as possible, leaving that elasticity which his Royal Highness and yourself think so necessary, do you see anything in the general arrangement of the Bill that is desirable to alter?—I do not think so. If the Bill is to be brought in in this way, it does not appear to me that there is much to alter in the arrangement of it. There are one or two little things, but nothing of any consequence.

General Skute.

244. Talking of active service, do you consider "war" a better term than active service?—I think so.

245. To illustrate that, when our troops were concentrated in Bulgaria at the time of the Crimean War, was not that a time of war with reference to those troops?—Yes; I consider certainly that that would be either "war time" or "active service."

246. With reference to the various questions that have been put to you, could you shortly and clearly tell us what you consider really to be the difference between the Mutiny Act, and the Articles of War, and the new scheme?—The whole difference appears to me to be that the Mutiny Act, in general terms, provides limits, but leaves all detail of discipline to the Articles of War; while the new Discipline Act deals with all in detail. The Mutiny Act begins by stating, first, that it is necessary that soldiers who mutiny or desert, or commit crimes against discipline, should "be brought to more exemplary and speedy punishment than the usual forms of the law will allow;" that I read to mean that it is necessary that we should have a law more elastic than the common law of the land. Then going on in the first clause, it says that Her Majesty may make Articles of War, which shall be judicially taken notice of by all judges and in all courts whatsoever. I look on that clause as saying that the Crown may provide in detail in the Articles of War for all crimes, and although this clause limited punishments, yet it really confirmed and extended the powers of the Crown by making the Articles of War apply to peace and war, without disturbing the powers of the Crown to make Articles of War for war time. Then if you look over the Articles of War we have the 164th Article of War, which was put in about the year 1830; that was as to the provost marshal; that was put in and exercised entirely under the rights of the Crown, irrespectively of the Act of Parliament. That is now brought into an Act of Parliament;



*General Shute—continued.*

Parliament; I think there is a great difference in that. Then, again, there is the 189th Article of War, which runs now thus: "No person subject to the Mutiny Act shall be sentenced to suffer any punishment extending to life or limb, or to be kept in penal servitude by virtue of these our Articles of War, except for such crimes as are expressly declared by the Mutiny Act to be so punishable." That used to run exactly as it ran in the first section of the Mutiny Act: "Provided that no person within the United Kingdom of Great Britain and Ireland or within the British Isles shall be subject to suffer any punishment," and so on; but it was found that as far as peace time went that might have extended to all places abroad, and that new Article was put in instead of the old one. That was put in by the Crown, and it might be taken out by the Crown; and then you would have the Articles of War with the full power that they had before that was done. When you put all this into an Act of Parliament, I do not see how you can say that in war time you may do so and so, and that then you may put an Article of War to say that you may do something else; that is all that I object to in it; and if that can be got over of course my objection fails.

247. Would you explain the principles upon which the present Act is based?—I think that the principle of the Act is that the Crown may make Articles of War at home and abroad in time of war, provided that they do not exceed the limits which are laid down generally in the Mutiny Act. Then in the 15th section it names the crimes which are only subject to punishment by death and penal servitude in Great Britain; a sentence of death can only be awarded by a general court martial. Then in the 8th section it carries out the further necessary power by saying that penal servitude is not to be less than five years, or imprisonment beyond two years; and that every general court martial shall have the power to sentence any officer or soldier to suffer death, penal servitude, or imprisonment, forfeiture of pay or pension, or any other punishment which shall accord with the usage of the service, which then brings the other minor punishments under the Articles of War; and having done that generally, it leaves the Articles of War to carry those things out. That appears to me to be the principle, as we understand it as soldiers, and as I have always read it, and I think that is the view that Simmons takes of it in his book on courts martial; and I think he is right, but of course I am no lawyer.

*Mr. Campbell-Bannerman.*

248. I wish to get at the precise object of the elasticity which is desired; I understand that it is only in time of war that you think elasticity is necessary?—In time of peace I think the punishments, to all intents and purposes, might be laid down anywhere, and might be as rigid as you like; but supposing that in time of war the army were in some strait, say in the Shipka Pass, and part of the army was in great distress for food, and clothes, and ammunition, perhaps it might happen that the crime of desertion, or of sending flags of truce to the enemy, or some of those crimes which are named for a lesser punishment, became prevalent. If it was in the Articles of War, as it is, that these offences should be liable to such punishment as allowed by the Mutiny Act,

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*Mr. Campbell-Bannerman—continued.*

a general officer would, upon his own responsibility, with the latitude that the Articles of War give, act upon it, and then he would write home and say what he had been obliged to do, and ask to have the Articles of War extended and made clearer; and an answer might be sent back by the Commander in Chief to say that that Article of War had been extended. But that could not be done if it was under an Act of Parliament; it would have to come before Parliament, and Parliament might not be sitting, and a great many other things might occur. In fact, I think it is mentioned in Mr. Clode's book, that in the time of the Peninsular War the Duke of Wellington wrote home about it, and it was in consequence of the representations that he made that the clause about detachment general courts martial, and the Article of War as to the provost martial, were inserted; and those things may arise again. If the Act is to be a permanent Act, that is to my mind a stronger reason for having all these things made clear, and for the same elasticity being kept up.

249. Then, do I correctly understand that your argument is in favour of the power of making special Articles of War in time of war, or is it in favour of giving greater discretionary powers to the general commanding the troops in time of war?—No, my argument is, that the Mutiny Act had better do as it does now, give general limits; and that the Articles of War had better, as they do now, provide for everything.

250. But supposing that in time of war the circumstances arise to which you allude, if anything is to be done by the Articles of War the general on the spot cannot issue an Article of War; it has to be done by the Crown?—Yes.

251. The steps have to be taken here under the approval of the authorities, and the Article of War has to be sanctioned; and by that time the whole emergency may have passed, may it not?—If it has, so much the better; but of course we must do the best that we can. If the emergency arises, you have a good deal of latitude allowed in the Articles of War, except as now limited in the 189th Article, which prevents your awarding the punishment of death or penal servitude for any crime, unless it is mentioned in the 15th section of the Mutiny Act. But all our crimes in the Articles of War end in this way: "shall, upon conviction, suffer such punishment as shall accord with the Mutiny Act;" and in some cases they say, "other than death or penal servitude." But where they do not say that, I should have no hesitation in an emergency in confirming a court martial that sentenced a man to death, although the word "death" was not specially mentioned; and then I should write home and get the point cleared up.

252. As I understand it, no Article of War can be issued giving a greater punishment than is assigned in the Mutiny Act?—The limitation applies to Great Britain, as far as I read it, whether I am right or not.

253. But I am supposing that it is in time of war, and that the army is in the field?—There is no special limit then, except that contained in the 189th Article of War, which was put in by the Queen in 1866, and can be taken out again by the Queen under the same power, without reference to Parliament.

254. Is there no limit in the Mutiny Act with regard to punishment in time of war abroad?—

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No,

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No, none; the only limit is that named in the first and other sections.

255. So that, so far as the Mutiny Act is concerned, practically the articles do not restrict the power of giving punishments?—At present they do not in time of war, but they restrict it generally. You cannot give more than five years' penal servitude, or two years' imprisonment.

256. But up to that limit the general officer may do what he likes?—Yes, according to the Articles of War by sentence of court martial.

257. Can the Articles of War go beyond that limit?—Certainly not beyond the limit of five years' penal servitude, or two years' imprisonment, or whatever it is.

258. If circumstances arose which seemed to call for a special power to be given to a general in case of war, that power would still be restricted by the limit imposed by the Mutiny Act?—But that limit is death or penal servitude; and if you can shoot a man, you cannot go much beyond that. Two years' imprisonment is the most, and five years' penal servitude is, according to the Act, the least penal servitude that you can give; but it is not that we want power to give heavier punishments, but in war time we want the power that we have in the Articles of War, and to be able to exercise that power according to the circumstances of the case.

259. Your argument points rather to the fact that discretionary power is required to be given to the general?—It does, but by putting it in an Article of War, which makes it law.

260. But that discretionary power might, if Parliament thought right, be given to the general by statute in time of war, might it not?—If that power is given I have nothing to say against it.

261. I do not ask you whether that is desirable, but that would be really tantamount to what you ask for?—That would be the same thing. I have no objection to the Act being put in this way, or to its being codified, as long as these powers are kept. As a matter of individual opinion, I do not think that this arrangement is so simple as the one we have got; but, if it is thought more simple, I do not see why it should not be worked if we had this power.

262. As a matter of fact, in the only great war that we have had in recent times, the Crimean War, do you know if any new Article of War was called for then?—I was not in any part of the Crimea, I was with the Turkish Contingent there, and I was not with our army; I think I have heard of some cases being dealt with. But then at that time the 189th Article of War was not altered, and at that time you kept the power of giving death and penal servitude for crimes not mentioned in the Mutiny Act. The 189th Article of War was only altered in 1865, so that I think we had all the power that was necessary then; but I would rather refer you to somebody who was there.

Lord Elcho.

263. Were the men who went out to put up the railway in the Crimea under the Mutiny Act?—I think so.

Mr. Campbell-Bannerman.

264. With regard to the maintenance of the Articles of War pretty much as we have them now, being possibly altered a little, and their language being simplified, you consider that it

Mr. Campbell-Bannerman—continued.

would be an advantage if a simple body of Articles of War were maintained side by side with the Mutiny Act?—I think it would be the most useful thing that the army could have. I have no doubt but that the plan of the Mutiny Act and Articles of War are the best for the army. What I like in the Articles of War and the Mutiny Act is, that it is not simply a dry law book, but it begins with the duties and liabilities and obligations that soldiers have undertaken. We read this to the army, and the men of the army are getting more educated, and they read this a good deal, and they see that when they become soldiers they have undertaken other duties besides the duties of citizens. They see what those duties are, laid down in the first section in the Articles of War, and then they see the crimes and the penalties that result from disregarding those duties. In the same way the Mutiny Act begins by setting forth the general principles of the Act, showing why it is necessary; and officers who take it up learn to regard military law and discipline as going hand in hand, and that military law is necessary to maintain discipline. They do not take it up as a book of law which they do not quite see the object of. That is why I like this, and the army understand it.

265. The army understand it, but they might, of course, with greater ease understand something that is simpler?—Yes, if you can make it simpler.

266. It is only by long practice that they have come to understand it?—I do not know. The wonder is that the book is so little confused. For some 180 years it has been altered every year. We have got things altered from time to time as Parliament thought necessary, and we have got things altered as lawyers found out legal difficulties. At the same time, those very advantages have caused a confusion in the clauses, and it is that confusion which requires to be put right; but I cannot help thinking that, so far as soldiers are concerned, our present plan is the most useful.

267. You do not think that that is merely from the fact that they have got accustomed to these, and have after great labour been able to master them, and therefore, of course, the new system would be more difficult at first?—The great difficulty, I think, lies in the civil clauses; but if a clause was taken and cut up into five or six different paragraphs in the printing, I think you would get over a great deal of that.

Mr. Hayter.

268. With reference to what the Chairman asked you, does not Clause 9 of the Army Discipline Bill appear to you to be put in the wrong place; does not that make the power wider?—It gives it you for any time.

269. It applies to the crime of treachery, and yet it is punishable only by imprisonment?—Yes.

270. Is it in your opinion likely to mislead members of courts martial?—It is similar to the 63rd Article of War, and I daresay it is a copy of it. I think it is a very serious crime, and that it ought to be more severely punished than that.

271. Sir Henry Thring explained that the word "treacherously" was left out; but what I wish to ask you is this: that as this is a simplifying Bill, is it not inadvisable to leave this clause in that state between those other clauses which allude

Mr. Hayter—continued.

allude to active service alone; do you think that members of a court martial would interpret this correctly; or is it not likely to mislead them?—Where would you propose to put it?

272. Might you not put the clauses with regard to active service together, and then put this one at the end separately?—I think that that would be better. All the others are as to active service or when before the enemy; but I should not pay much attention to it.

Mr. Herschell.

273. I want to understand your view with reference to the extent to which elasticity is desirable; as I understand you, you are content that in time of peace the matters shall be somewhat rigidly laid down?—I think that if the first section of the Mutiny Act said that “in time of peace no man shall be sentenced to suffer any punishment extending to life or limb, or to be kept in penal servitude except for crimes which are by this Act expressly made liable to such punishments as aforesaid,” that would do. All we want is that the Articles of War should be kept elastic for war time.

274. As regards time of war, do you suggest that it is desirable that no limits should be laid down at all?—No more than there are now.

275. Do you suggest that there should be an absolute power in time of war to make Articles of War without any limitation in an Act of Parliament?—Yes, exactly as it stands now.

Mr. Merewether.

276. Do I correctly understand that you wish the Articles of War and the new Bill, whatever it may be, to correspond exactly throughout as to crimes and their punishments?—I do not mean the Mutiny Act to have any crimes at all, except as necessary to establish a limit.

277. You prefer that the Mutiny Act should be curtailed and the Articles of War left full?—Instead of putting the Articles of War into the Mutiny Act, I would put the Mutiny Act into the Articles of War, and condense the Act as much as possible; but you must repeat some crimes in the Mutiny Act, because you must name those for which you only allow the punishment of death and penal servitude at home.

278. You prefer the Articles of War as a basis to the Mutiny Act?—Of course, the Articles of War must agree with the Mutiny Act; the Mutiny Act is the basis.

Major O’Beirne.

279. Do you think it impossible to frame a code of regulations which will contain everything in the Articles of War and everything in the Mutiny Act, and which will at the same time be perfectly practicable under any conditions, whether in time of peace or in time of war?—I do not think you could frame such a code as would do for every time without having what you have now. In the new scheme we seem to be going back to an old plan which has been tried and failed, and if you go back to the former Mutiny Acts, when they were first brought in, Articles of War were not judicially taken notice of, and they were not named in the Act of Parliament to be taken notice of; the consequence was that there was always an express provision. In 1714 the provision was this: “Provided always, that it shall and may be lawful to and for Her Majesty  
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Major O’Beirne—continued.

to form, make, and establish Articles of War, and erect and constitute courts-martial, with power to try, hear, and determine any crime and offence by such Articles of War, and inflict penalties by sentence or judgment of the same in any of Her Majesty’s dominions beyond seas (except in the kingdom of Ireland) for and during the continuance of this Act, in such manner as might have been done by Her Majesty’s authority beyond seas in time of war;” so that a saving clause of that sort was put in. The crimes were then named in the Mutiny Act, and then a few years after that came another clause beginning, “Whereas it is found that there is no proper law for abroad;” then the saving clause was altered, and they said that Her Majesty might make Articles of War abroad and at home in time of peace as well as in time of war, including Ireland and the whole of Great Britain; even now there is a saving clause as to the rights of the Crown in the Naval Discipline Act. The consequence of that was that they had the crimes in the Mutiny Act, and they had also the crimes in the Articles of War, because they provided for different purposes. Somewhere about the year 1850, as near as I can recollect, the clause was altered to something like what we have now, and instead of the crimes being put in the Mutiny Act, they were put in the Articles of War with a limitation only in the Mutiny Act, I suppose we grew into it from finding that the other system did not answer; and it seems to me that we are rather going back to that other system; I quite agree as to the advantage of consolidation.

Sir Alexander Gordon.

280. Would not your difficulty be overcome, and would not the elasticity which you desire be obtained if the separation of crimes on active service and not on active service was abolished and the present custom continued, of there being no distinction between the two?—That is the present custom, but it is in the Articles of War, and that makes all the difference.

281. But if you embody the Articles of War in the Mutiny Act, and strike out the difference between crimes committed on active service and not on active service, your difficulty is overcome, is it not?—No, I do not think so, because you will have them all in the Act of Parliament, and the punishments will be rigidly laid down, and I do not see how a court-martial could go against those punishments.

282. But if a clause were put into the new Bill similar to the 164th Article of War, giving the Commander in Chief full power as to death and everything, would not that give you the elasticity which you want?—I think it would be much better for us not to have that power. I would rather have the Provost Marshal’s power of flogging men who plundered, or of punishing them in whatever way might be necessary. I would rather have a court-martial wherever I could.

283. But you have that power now under the 164th Article of War?—It is very general. That article does not say that the Provost Marshal may hang a man.

284. But they do hang them, do they not?—They do hang them, but the general does that upon his own responsibility, and he would be held responsible for exercising that power with  
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Major Gen.  
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judgment and discretion. I do not want to make it a statutory power, but to leave it to be acted upon with judgment according to the necessity of the case.

285. But if it is such an alarming power, it certainly ought to be given by Act of Parliament?—The power is very vague: it does not say that a general who has a man shot will be absolved; it throws the responsibility upon him. It is a very large power.

Colonel *Mure*.

286. In reference to the objection that you have to this proposal, and your preference for the existing state of affairs, I should like to call your attention to the 41st clause of the Army Discipline Bill, which embodies what is generally called the "Devil's Clause"; it is that, "Every person subject to military law who is guilty of disorder, neglect, or other conduct to the prejudice of good order and military discipline, although not in this Act specified, shall be liable to suffer any punishment not exceeding imprisonment;" that refers to a time of peace; but supposing that that clause were to be extended to providing for death in time of war, it seems to me that that would meet all the objections that you have brought forward?—It would, in this way: that any person guilty of any crime, although not in this Act specified, could be punished.

287. But this "Devil's Clause" is to provide for crimes which are not specified; it is not possible to specify all the crimes?—That is so.

288. And I have always understood that the "Devil's Clause" was to fill up the gaps that must necessarily exist where you cannot specify every crime?—It is not that we want more crimes put in; it is punishing the crimes that have gone before, according to the emergencies and exigencies of the service. You have here, that if a soldier deserts to the enemy he shall be liable to suffer death, but that under other circumstances he shall only suffer penal servitude. Supposing that a number of men in war time were deserting, but not to the enemy, I do not see how you could punish them by sentencing them to death.

289. It is "death or such other punishment as is in this Act mentioned"; I do not mean that death is the only alternative that a court-martial is to have; death is the extreme penalty; there is no crime for which death is the only penalty?—No, it is "death or other punishment." You have got here a rule that if a man deserts to the enemy he shall suffer death or other punishment; but if he deserts in war time, but not to the enemy, you can only give him a lesser punishment. I think that if in time of war a great many desertions occurred, it might be necessary to make an example.

290. I always supposed that desertion to the enemy was punishable with death?—But there may be desertion in war time not to the enemy.

291. In this draft Bill it appears to me that as far as possible every military crime has been included?—No doubt.

292. All those crimes that any reasonable man would lay down as being punishable with death are also included; and if you had this "Devil's Clause," which fills up all the gaps, and if you provided in the 41st clause that in time of war the punishment of death should be in the power

Colonel *Mure*—continued.

of the commanding officer, that would meet?—would it not, all the objections which you have raised?—I suppose that that would meet every case.

*Chairman*.

293. I understand that you think that in one form or other these matters, which are now distributed between the Mutiny Act and the Articles of War, ought to be put together, only you would prefer to put them into the Articles of War out of the Mutiny Act, instead of putting them from the Articles of War into the Mutiny Act?—I think that there are only three or four clauses to take out of the Mutiny Act and put into the Articles of War. I would like to put in the Mutiny Act everything that absolutely requires legislation, and nothing more. I should like to see the Mutiny Act condensed so as to contain all this and the limits of punishments, and then that all the rest should be put in the Articles of War.

Lord *Elcho*.

294. With reference to what you said about objecting to the term "on active service," if we turn to the first clause of this Bill, there are many cases which might occur, not before an enemy, but where troops are engaged in the suppression, say of internal commotion, in aid of the civil power; would you consider such troops to be on active service?—I do not think that active service means aid to the civil power.

295. Then, as a matter of principle, under the term "active service," which you say does not apply to such cases, a man may be punished by death under this Bill who abandons or delivers up a post, who intentionally creates false alarms, who forces a safeguard, who plunders, or does violence to the inhabitants, who breaks into any house, or who treacherously makes known any watchword. All those cases might occur in special internal commotion quite as much as before the enemy; should not a soldier so employed be as severely dealt with as if he were employed before the enemy?—Yes; in our present article the expression is "rebel or enemy."

*Chairman*.

296. Taking the case of the English army in Paris after the peace of 1815, they were there for two years in occupation; that would be on active service, but not in time of war?—They would come under the Mutiny Act, and under the 145th Article of War I think, which provides for places out of Her Majesty's dominions.

*The Judge Advocate General*.

297. With reference to the Provost Marshal Article which is now the 164th, and which will be incorporated according to the scheme into the Bill, are you not of opinion that the provisions of that Article are quite sufficient to meet all exigencies in time of war?—For Provost Marshal duties, but not for others.

298. Not to repress crime?—I think not. I look upon this Provost Marshal Article principally in reference to camp followers, and people who go about plundering a camp, or anything of that sort.

Mr. CHARLES M. CLODE, called in; and Examined.

*Chairman.*

299. You are Legal Secretary to the War Office, are you not?—I am.

300. I dare say you have had under your consideration for some time the question of simplifying the Mutiny Act, and the Articles of War?—It arose, I think, in 1859, in the time of Mr. Coulson. It was then first suggested that we should revise the Mutiny Act, and deal with it much on the same plan as Sir Henry Thring is now dealing with it, separating the disciplinary clauses on the one hand, and taking another Act for the administration of the army.

301. Do you think that it is a matter of great importance, for the good discipline and proper administration of the army, that the Mutiny Act and the Articles of War should be re-cast?—That is my impression; I think that the history of the question almost shows that. We had Articles of War in the earlier stages of the army, and the army was entirely disciplined, and kept in order in reference to its obligations to the Crown by the Articles of War. Then, as you know, in the time of William and Mary, when we looked at things in a rather more constitutional light than we had been in the habit of doing before, it was necessary to take the authority of Parliament for dealing with the graver crimes; and that power was conceded in about six or seven sections. But it is a mistake to suppose that the army was ever governed by anything but the Articles of War as regards the smaller matters of discipline. The higher crimes are defined by statute. From that time Parliament has been gradually asserting its authority, and in that way we have got two codes repeating each other; and no doubt it is a very great evil.

302. It is a great difficulty, is it not, with regard to many of the heads of the law, to find out what is the law as between the Mutiny Act and the Articles of War?—Quite so.

303. They deal constantly with the same subject in somewhat varying language?—They do.

304. And that is likely to confuse anybody, I suppose, lawyer or soldier?—No doubt.

305. Are you in favour of consolidating the two into one?—I think so.

306. Do you see how the thing can be really done without a consolidation of, at all events, those parts of the law which deal with the same matters into one document?—No, I think not.

307. To keep two documents alive side by side dealing with the same matters must be a source of confusion, must it not?—No doubt.

308. Either the two things must be identical and then one of them is useless, or they must be different and then both are confusing?—Quite so.

309. Therefore, in some form or other, you must arrive at one document dealing with the same matters, must you not?—I think so.

310. Do you see any objection whatever to incorporating the existing Articles of War into a regular statute for the discipline of the Army so long as sufficient power is left to the Crown hereafter of dealing with any new or exceptional cases by Articles of War?—None whatever. If you remember, in the year 1717 the very same thing was proposed, and it was only objected to because we did not want a standing Army. But given a standing Army, I think most people will

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*Chairman—continued.*

concede that you had better have it governed by a permanent code than by a code which may be from time to time changed at the caprice of any one who wishes to practise legislation.

311. I suppose that there is great danger of Articles of War being created which should be inconsistent with the Mutiny Act?—Certainly. The question arose about the year 1748.

312. That was Lord Hardwicke's opinion, was it not?—It was.

313. Lord Hardwicke's opinion was, that the Articles of War could not create a new crime, was it not?—Nor could they be extended to any one who was not within the first section of the Mutiny Act; it was the case of the sutlers in Holland.

314. Therefore, both with reference to the persons to whom it was applied, and in the case of the graver offences, it was held by Lord Hardwicke, and has been unquestionable law ever since, that the Articles of War could not create a new crime of the graver character?—Quite so.

315. Therefore, if there be Articles of War that do apply to crimes of the graver character, it is of very great importance, is it not, that the question should be set at rest by their receiving statutory authority?—I should think that it would be a great advantage.

316. It would preclude any question of that kind being hereafter raised with reference to these matters?—Yes. The clause (81) that we are now dealing with in regard to the power that the general has, is really in fact the Duke of Wellington's General Order of November 1810. I am speaking of the Provost Marshal Clause, the 164th Article, which is a clause of greater power in this draft Bill than we have ever before had. If you compare that clause with the Duke of Wellington's General Order of November 1810, you will find them almost identical; and throughout the Peninsular War the war was carried on entirely by the authority which ministers at home gave to the Commander in Chief.

317. Do you see any difficulty whatever in reserving in this Bill to the Crown as ample powers with reference to Articles of War as those which it previously possessed, or possesses at present under the existing Mutiny Act?—I think not; but with regard to the general question of martial law, upon which these articles have some bearing, when you divorce the Preamble from the enactments, you rather vary the question; because the question of martial law now stands in the Preamble of the Mutiny Act, which is the only declaration of the general power of the Crown to declare martial law, that that power is not to be used in time of peace (those were words put in, I think, in 1718), and also that they should not be used in the United Kingdom. If you re-enact those words in another Act you will put the law in the same position in which it now exists under the Mutiny Act.

318. Therefore, practically speaking, you would be stereotyping, as it were, the existing Articles of War which have been found to be in conformity with the wants of the Army, and at the same time you would have a future power to meet future emergencies?—Quite so.

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319. We

Mr. Clode.

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Mr. Clode.

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Chairman—continued.

319. We may take it for granted, I suppose, that the existing Articles of War substantially are those which have been by experience found desirable?—They are founded mainly, I think, on the Articles of 1717.

320. If they were stereotyped in a statute, and power was still reserved in the Act to make such changes in them, or to make such additions to them as might be necessary, that would be all that would be required?—Quite so.

321. Then you would get the advantage of having a simplified and single code all covered with statutory authority?—Quite so; but as a matter of fact, I think you will find that the Crown has not availed itself of the power which was reserved in this Act of making special Articles of War in the event of the Army being on active service.

322. Take, for instance, an Army like that in the Peninsular War; what the Duke of Wellington would have done would not have been to have sent home in those days for an Article of War which probably would have taken some months to get back again to him, but he would have acted upon his authority as the Commander of the Army?—Yes; and that is just what the Duke of York did in 1794; and in fact, in the Duke of Cumberland's time it is recorded that he dealt with his Army much in the same way as the Duke of York did in Holland, and as the Duke of Wellington did in the Peninsula; but they never resorted to the Crown to make an additional Article of War.

323. I do not suppose that the Duke of Cumberland waited for an Article of War?—No; but I am only giving that as showing the continuity of the principle.

324. It would not be a practical method of dealing with emergencies in the field to send home for a new Article of War?—No, not so far as Articles of War are concerned.

325. Practically speaking, I suppose the general in the field would act upon what we call common martial law?—Quite so.

326. You have looked generally at this Bill, I suppose?—I have merely looked at the outline of it. I know what the scheme of it is.

327. It is a scheme incorporating, practically, the Disciplinary Articles of the Mutiny Act and the Disciplinary Articles of War together, and digesting them and bringing them into operation by a short annual Act; is that a plan of which you approve?—I think that it is the very plan to adopt. There appears to me to be a great evil in the Mutiny Act; in the first place it embraces a great many things which a soldier as a soldier has nothing to do with. When you subject a man to punishment, you ought to give him knowledge of the offence; but with regard to the Mutiny Act there are so many things extraneous to the discipline of the army in it that it is rather confusing than otherwise.

328. We obtuse lawyers find it of advantage where the law relating to any subject has been distributed in many statutes or documents, to get it into one; I suppose that soldiers might derive some advantage from a similar operation?—I should think a great advantage.

329. Generally speaking, I understand that you would approve, without pledging yourself to the details of this scheme, of the general plan of a consolidation of the military law with reference to discipline?—Quite so.

Chairman—continued.

330. And you would consider that the other matters should be brought into another chapter, whether in the same Bill or in a different Bill?—Quite so.

General Shute.

331. Do you think that a general officer in the present day would venture upon the responsibility which the Duke of Wellington took upon himself in 1810, with regard to the General Order upon which the Provost Marshal Clause was founded?—I hope he would; but he would not have occasion to resort to what the Duke of Wellington had occasion to resort to, because you have given him here statutory power to exercise all this authority.

332. But the Duke of Wellington was without that when he issued that order; would a general officer under similar circumstances in the present day venture on issuing such an order?—I do not know. You as a general officer are better able to judge of that than I am.

Mr. Herschell.

333. Do I correctly understand that according to your view, experience shows that these Articles of War have not been dictated by the emergencies that have arisen?—That is it. The only time, I think, when the Crown ever issued an Article of War, other than at the time of the annual issue, was in 1829. I rather think Lord Hardwicke issued an order then, but that was not under circumstances of war.

334. When was the last new Article issued?—I think that it was at that time, 1829.

Mr. Merewether.

335. There has been one objection which I will epitomise thus: that an Article of War when it gets into the Mutiny Act, cannot be altered so readily; do you see any force in that?—That is true, no doubt.

336. Will that really make any difference?—Looking at the experience which we have had of the alterations that are made, I do not think it would.

Sir Alexander Gordon.

337. Would it not be desirable to take the opportunity of the present revision of the law to define or explain the difference between martial law and military law?—I hope that most of us do understand it; but if you can make it clear by a Parliamentary declaration on such a question, it might be desirable.

338. There is no reference to martial law in the Mutiny Act, is there?—We rather lead up to the confusion by using the term "martial law," as to matters which have nothing to do with martial law.

339. Would it not be desirable to take this opportunity to give some explanation of what martial law is?—Yes, if you can clear the way for it.

340. Are there not some Articles of War which might be made the subject of regulations for the army?—I think so. Looking at it as a matter of fact, when the Articles of War were first signed by the Crown, they were practically every direction that the Crown gave for the army; you will not find any regulations for the army at an earlier date than about 1776. The whole legislation of the army as dealt with now by regulation and

Royal

*Sir Alexander Gordon*—continued.

Royal Warrant is a matter of quite modern date. When these Articles of War were first founded, they were the only direction which the Crown gave for the army.

341. Is not that an argument for discontinuing the Articles of War now as a separate document from the Mutiny Act?—I think it is a strong one.

*Colonel Mure*.

342. Looking at the Discipline Bill and the general scheme which is now before the Com-

*Colonel Mure*—continued.

mittee, do you yourself believe that there would be still sufficient power left to provide for those cases which cannot come actually under a statute and for the discipline of the army, that is to say, that sufficient elasticity and power would be left to the Crown?—That depends upon how you settle your Bill; it is quite possible.

343. You think that the general scheme provides for that, power being left to make Articles of War outside these two Bills, and there being also a very sufficient "Devil's Clause"?—Yes, I think so.

*Colonel J. H. ROCKE*, called in; and Examined.

*Chairman*.

344. You are Deputy Judge Advocate, I think?—I am.

345. You have probably considered the matter which is before the Committee, viz., the amendment of the Mutiny Act and of the Articles of War; do you think that they are at present defective, and require amendment?—At present I think that they require re-arrangement, to say the least of it.

346. You think it undesirable that there should be two documents side by side dealing with the same matter?—Certainly.

347. And you consider that that leads to confusion in the administration of the law?—Precisely so.

348. Therefore, in some form or other, should you be of opinion that those two documents should be harmonised, and brought into one?—Decidedly.

349. Have you at all considered the Bill which has been submitted to the consideration of the Committee?—Yes, I have gone through this Bill in detail.

350. The general scheme of that Bill is to consolidate the provisions of the Mutiny Act and the Articles of War into what may be called a permanent code, and to bring them into operation by an annual Act; generally, do you approve or disapprove of that project?—I think that if you determined to do away with the present system of Articles of War, the Bill which is now before the Committee will generally meet the object which is desired.

351. You are aware that the Bill proposes to preserve the right of making Articles of War for any matter not provided for in the Bill?—Precisely.

352. But with reference to the existing Articles of War, it would, as it were, stereotype them, reserving to the Crown the power to nullify, or add to them, hereafter?—Yes.

353. Do you see any objection to that?—I see no objection to it, certainly.

354. We may take, I suppose, the existing Articles of War as being the result of long experience?—Precisely so. It seems to me that you are now proposing a code which will provide for the administration of justice, exactly as it does now, except that in some respects it will be better, because it will be more simple.

355. That is to say we may take the Articles of War to have been the result of long experience which have framed themselves into their present shape; and by combining them with the Mutiny

*Chairman*—continued.

Act we are stereotyping the result of that experience?—Yes.

356. It would be unwise of course to bind the Crown not to alter it hereafter, either with reference to the existing articles, or as regards the creation of any future articles; and if such a power were amply retained in the Bill do you see any objection to putting the two together?—I think that there is no objection if it is as you state.

357. Clause 81 is the clause which I think professes to reserve what I may call the Article of War making power?—Yes. If any Article of War made by Her Majesty had the power conferred by this section there would be no objection. I may observe that these are not called Articles of War; this is an Army Discipline Act. It says that "It shall be lawful for Her Majesty to add Articles of War," but these are not Articles of War.

358. You take the existing Articles of War and incorporate them into the statute; but if it be necessary you may have a new set of Articles of War made by Her Majesty answering the same purposes of modification that the old articles have answered?—There can be no objection in that case.

359. As I understand, this Bill is merely stereotyping the Articles of War, and leaving the power hereafter of making new Articles of War?—Precisely. The difficulty that I had was in the term "Articles of War;" because these, that is to say, the Army Discipline Act, will cease to be termed "Articles of War."

360. But what is proposed is, that hereafter, if this Discipline Act is found insufficient or inconvenient, there shall be reserved to the Crown the old power of making new Articles of War?—The 81st section of this Act runs, "it shall be lawful for Her Majesty to make, repeal, alter, or add to Articles of War;" so interpreted, I think it is satisfactory.

*Sir Alexander Gordon*.

361. Does not this power in Clause 81, in fact, enable the Sovereign to alter an Act of Parliament?—That was the difficulty which I tried to explain. This appears to me to be an Army Discipline Act, and Her Majesty is to have power to repeal, alter, or add to the Articles of War.

362. Therefore, it amounts, in fact, to Her Majesty altering or repealing, or adding to an Act of Parliament?—Yes, so it seemed to me.

363. That is a new power vested in the Sovereign?—Yes.

*Mr. Clode*.

31 May  
1878.

*Colonel  
J. H. ROCKE.*

*Tuesday, 4th June 1878.*

MEMBERS PRESENT :

Mr. Campbell-Bannerman.  
Lord Elcho.  
Sir Alexander Gordon.  
Sir Henry Havelock.  
Mr. Hayter.  
Mr. John Holms.  
The Judge Advocate General.  
Colonel Loyd Lindsay.

Mr. Merewether.  
Colonel Mure.  
Major O'Beirne.  
General Shute.  
Sir Henry Wilmot.  
Mr. Parnell.  
Lord Charles Beresford.  
Viscount Hinchinbrook.

THE RIGHT HONOURABLE THE JUDGE ADVOCATE GENERAL, IN THE CHAIR.

Sir HENRY THRING, K.C.B., re-called ; and further Examined.

Sir  
H. Thring,  
K.C.B.  
4 June  
1878.

*Chairman.*

364. IN the Scheme of the Army Discipline Bill, which you have placed before the Committee, you have departed considerably from the arrangement of the existing Mutiny Act, have you not?—Yes, very considerably.

365. Will you explain to the Committee the particulars in which you have departed from it?—I think that the easiest way will be if the Committee will be good enough to take in one hand the Paper marked No. 5, "Provisions of Mutiny Act and Articles of War, arranged under headings," and also a subsequent Paper called "Contents of the Mutiny Act, 1877," made at the request of Sir Alexander Gordon. It does not matter which the Committee take. If the Committee will be good enough to look at the arrangement of the clauses in the scheme of the Army Discipline Bill, I think they will readily follow the explanation which I shall endeavour to give. With respect to the scheme of the Army Discipline Bill, I have arranged it in this way: I will first give the general principle, and then I will go into the detail. In Part I. I put "Military Law," in Part II. I have put "Administration of Military Law," in Part III. I have put "Application of Military Law," Part IV. I have called "General Provisions," and in Part V. I have put "Saving Clauses and Definitions." With regard to the reason why I have adopted that particular arrangement, without troubling the Committee to go into the principle in any detail, I may say that for a long time I have proceeded on a regular system of arranging every Act according to a particular principle; and I have endeavoured to state my reasons for that in a very dull book, intitled "Practical Legislation," which I have written, and which is published by the Government, but with which I will not trouble the Committee more than is necessary for this purpose. I consider that, in the arrangement of every Act of Parliament, you ought to put the law before the administration of the law. Therefore I have put the military offences before I have put the

*Chairman—continued.*

mode in which the offences are to be punished, viz., by court-martial. With respect to the Application of the Law, military law happens to be a very peculiar law; it only applies to Her Majesty's subjects under certain conditions, in certain places, and for certain times; and therefore, as soon as I have explained in the first place what the law is, and in the second place how that law is to be administered, I then describe the persons for whose benefit, or perhaps I should rather say for whose discipline that law is to be administered. Then with respect to the General Provisions. These really are provisions which the Committee will see at once do not accurately arrange themselves either under the offences or under the administration of the law; they relate to the privileges of soldiers, and to a variety of matters which are not strictly speaking military; and therefore I gather them together in a part by themselves. Then with respect to the Saving Clauses and Definitions, I can only again appeal to the book which I have written to explain the classification more fully; I consider that at the end of the Bill you ought to put the Saving Clauses; and then I think the Definitions rightly come there, because Parliament can best judge of the mode in which words ought to be defined when they have gone through the Bill and seen how the law is to be applied; therefore that is the reason for my arrangement of the scheme of the Army Discipline Bill. The reason why I have disturbed the arrangement which is contained in the Mutiny Act and the Articles of War, will, I think, be apparent with scarcely any explanation whatever. I will go rapidly through the Mutiny Act, under the first heading of which come "the general principles of the Act." I have put in Part I. of the Bill so much of that as I thought ought to be there, the preamble, for instance. Then with respect to the "Constitution of Courts Martial," I put that in Part II. in my Bill for the reasons I have already alleged, and I put "Crimes and Punishments" in Part I. I hope

*Chairman—continued.*

hope the Committee will not think that I am insisting too much upon this arrangement; it may be a mere matter of pedantry on my part, but I always follow the rules which I have laid down. Then with respect to "Military Prisons and Civil Gaols," that comes, partly at all events, within Part II. of the Bill, "administration of the law." Then with respect to "Desertion," in so far as relate to action by the civil power, the provisions will be found in "General Provisions in Part IV."; in so far as it relate to the crime of desertion, the provisions will be found in Part I. of the Bill under "Desertion and Absence without Leave." "Extension of Furlough" will be found in "Miscellaneous Provisions." "Privileges of Soldiers" will also be found there. Enlistment is excluded purposely from this Bill at present; whether it will come into it or not is a question for the Committee. "Pay of the Army" is put in a category by itself. It is at the end of the Administration of Military Law in Part II., because I thought it came in there more conveniently. "Billets and Carriages" are omitted at present, and will come in as a separate part. "Discharge of Soldiers" is in the enlistment part. Then "Penalties at Law" come in Part IV., as being general provisions. Then the miscellaneous enactments are in Part IV., so far as they relate to discipline, or are concerned with discipline; otherwise they are intended to come in the Army Regulation Bill. That is the conclusion of the contents of the Mutiny Act as described under headings. Then with regard to the contents of the Articles of War, it is really a repetition of the same process. I have sifted the Articles of War; I have put the subject matter of the Articles of War and the Mutiny Act together, and I have followed the arrangement which I have already described. I do not know whether the Committee would wish me to go more into that particular point, but it would be easy to do so. If you take the contents of the Articles of War, "Miscellaneous Duties and Liabilities," for instance, you will see, by looking at the references, that a great many of those particular Articles will still be detained in the Articles of War, on the ground that they do not appear to be statutory enactments. Where they are statutory enactments, if they relate to enlistment, they will be found in the Enlistment part; if they relate to billeting, they will be found in the Billeting part; whereas those that relate to Army discipline you will find marked as being found in the Army Discipline Bill. The same applies to "Perjury," "Mutiny and Insubordination," "Desertion and Absence without Leave," "Offences in the Field, Camp, Garrison, or Quarters," and so on. Those being actually part of the Military Law, will all be found, with some very trivial exceptions, which I could explain, in the first part of the Army Discipline Bill. The same observations apply to Drunkenness and Disgraceful Conduct, and the whole of the Crimes and Punishments. "Billets and Carriages" will go into the Billeting part. "Recruiting" also will go into the Enlistment part. "Miscellaneous Offences" are in the Army Discipline Bill, with the exception of one or two which appeared not to be properly the subject of statutory disposition. The "Composition of Courts Martial" goes in Part II.

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*Chairman—continued.*

of the Bill. "Powers of Courts Martial" also in Part II., while Punishments, in Part I. The Committee can see at once, by looking at the index before them, that the same principle has been followed throughout. Wherever the provisions related to discipline, they have been put in the Army Discipline Bill; wherever they appeared not to be proper matter for statutory disposition, they are intended to be put in Articles or Queen's Regulations; and when they relate to billeting, or other matters at present not in the Army Discipline Bill, I have retained them to be grouped under their particular headings.

*Lord Elcho.*

366. Then, practically, what you have done is this: that you have, to use a military term, inverted the order of things in the existing Mutiny Act, to a great extent; that is to say, that whereas the Mutiny Act begins by enumerating the persons who are to be subject to it, and then goes on to the crimes, you begin with the law, and then the persons who are subject to it come under the heading of Part III., viz., the application of the law; you have done that, because you think it is a better arrangement, and more consonant with the general principle of arrangement in the Bills which you have drawn?—Quite so; you may say that it is a bit of pedantry on my part, but it was done according to my regular rules of drawing Bills. If I am not ordered by the Government to do it otherwise, I have a regular set of rules which I universally follow in drawing Bills.

367. And those rules you have followed in this Bill?—I have followed those rules in the case of this Bill; it is a great deal a matter of taste.

*Mr. John Holms.*

368. In relation to this paper which has been put in along with your scheme, and which is headed, "Alterations recommended by the Royal Commission appointed to inquire into the Constitution and Practice of Courts Martial in the Army, and the present system of Punishment for Military Offences," have you embodied those recommendations in your Bill, or have you simply taken the Mutiny Act and the Articles of War?—That paper is the only paper, I believe, that I have not drawn myself; but I rather think, though I am not quite certain, that the Mutiny Bill does not embody any of those recommendations. It was considered better to put the existing law before the Committee as it stood, and to leave any alterations to the Committee. I ought to know, but I really have not read this paper very carefully.

*Mr. Campbell-Bannerman.*

369. So far as these recommendations have been adopted and embodied in the Mutiny Acts which have been passed, of course they appear in this new Army Discipline Bill?—Certainly.

370. But generally no new matter or alteration, in accordance with these recommendations, has been introduced?—No.

*Mr. Merewether.*

371. Those that have not been attended to you have not adopted?—No, I have not. I was not instructed

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Sir  
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K.C.B.  
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Mr. Merewether—continued.

instructed to put them in, and I thought it was better to leave the thing as it stood for the Committee to consider.

372. Except the first recommendation, "That the Mutiny Act and Articles of War should be carefully re-drawn"?—Perhaps the Committee will say that that has not been done, but I have endeavoured to do that.

Colonel Mure.

373. With regard to this paper of alterations recommended by the Royal Commission, showing those which have been already adopted, and those which have not; when you drew up the scheme of these two Bills, you were under the impression, I suppose, that it would be reserved for the Committee to consider how far these recommendations of the Royal Commission which sat in 1869 should be adopted or not?—I understood that the Government wished me to put forward a Bill, with the exceptions which I have pointed out in the notes, consolidating the existing law as much as possible in its present shape. With respect especially to regimental courts-martial, I understood that it was not desired that I should alter the law substantially, but that it would be more convenient that the Committee should consider the scheme as representing the existing law, and that then they should order me, if they wished it, to alter it in accordance with the recommendations of the Royal Commission.

374. The principle, as I understand, upon which you have separated matters is, that the Army Discipline Bill is chiefly composed of crimes and penalties, and the Army Regulation Bill of Administration; and that what you reserve for the Articles of War, are matters that are not statutory?—It is not quite so. There is a paper which I drew up at the request of Sir Alexander Gordon, headed "Contents of Mutiny Act, 1877." You will see there three columns: "Army Discipline Bill," "Proposed Army Regulation Bill," and "Notes." Then under the heading "Contents of the Articles of War," you will see three columns headed "Army Discipline Bill," "Proposed Army Regulation Bill," and "Articles of War, or Queen's Regulations, or Warrant." If you will be kind enough to glance down these columns, you will see at once that I have put in the Army Discipline Bill everything which I have considered, whether rightly or wrongly, related to discipline; that is to say, Crimes, and the Administration of Courts Martial. Then I have added the application of the Act to show who was subject to military law, and then I put in some miscellaneous things, which I had great difficulty in selecting, but which appeared to me ought to come in the Army Discipline Bill.

375. Upon what principle did you reserve matters for the Articles of War; I understood you to say that it was because they were matters that were not statutory?—Of course I may have been wrong in the selection, but I am telling you the principle upon which I made it. If you will take the case of "Pay of Officers Absent without Leave," which you will find on page 8, I put an asterisk to it, showing that in my opinion it ought still to remain an Article of War or a Queen's Regulation, because it appeared to me to be simply a direction from Her Majesty that officers absent without leave are not to have pay, or something of that sort; there is no penalty

Colonel Mure—continued.

attached to it, and it did not appear to me to be a matter of statutory regulation. Then take "Furloughs," again. Those are the sort of things which are merely directions from Her Majesty for the maintenance of good order; you will find that that is merely directory. Then there is the transmission of "Monthly Returns," "Entry of Commissions," "Soldier's Book," "Accounts;" you will find those again asterisked, because they appear not to be matters for Parliament, but a matter of regulation, which ought to be altered from time to time, precisely in the same way as in a civil Act I constantly put in that certain things may be done under rule of court. Without going through the whole of the scheme, I could not say in every case why I have made a particular alteration of a particular provision, but by going through it I could tell you; that the principle upon which I have gone is this, wherever a thing appeared to be worthy of an enactment, I have put it into the Bill; where it seemed mere matter of regulation, I have excluded it from the Bill, and reserved it for Queen's Regulations, or Articles of War, or Queen's Warrant. An enactment, I considered, ought to be adopted where you create an offence, or something, like an offence, and where you create a punishment or something like a punishment for disobedience to it; but I do not think that a mere direction that an officer should send up his accounts without any penalty being attached to it, is worthy of an Act of Parliament.

376. Looking at those points which you have marked with an asterisk, they appear to me to be matters which should have come into the Mutiny Bill; taking Habitual Drunkenness, for instance, that is a crime?—I thought that it was a direction only, that when a soldier was habitually drunk he was to be tried in a particular way. If it is a crime I have done wrong, but I thought it was only a direction about trying a man. If you look at Article 78 you will see this: "If any soldier shall be drunk when not on duty, and it shall appear expedient to the commanding officer that such soldier, by reason of previous offences of drunkenness, should be brought before a district or garrison court-martial, he shall make application to the general officer commanding the district or station, who shall, if he shall so think fit, make order for the trial of such soldier; and such soldier being convicted of the act of drunkenness, shall be liable to such punishment as the court may award. In every case where a soldier is found guilty by a court-martial of drunkenness, whether on duty or not on duty, the court shall, for the purpose of assisting their discretion in awarding punishment, receive evidence of all former entries of drunkenness against the prisoner in the regimental, company, battery, or other defaulters' book." I may be wrong, but I thought that was simply a direction to the officers about the trying of a man for drunkenness; but if the Committee think differently, of course an alteration should be made.

377. It appears to me (though I may be wrong) that there is a certain confusion in the arrangement; because I would point out that at page 11 of that Index which you have given us, taking Article 82, for instance, the next asterisk is opposite "Courts of Inquiry to be held in the cases of soldiers who become maimed or mutilated." Now, if a soldier maims or mutilates himself,

Colonel Mure—continued.

himself, it is a question of his having committed a crime or not; and I presume that what you maintain here is, that the reason why this should be retained in the Articles of War is that it is laying down a form of procedure, and that it is not a question of penalty?—Yes. I have done that, because I thought there was no reason why a court of inquiry should necessarily sit in that case more than in any other; but it may be that I am wrong, and that it ought to be made obligatory by statute.

378. Then we come to the next one where there is a crime laid down, in the case of "Soldiers tampering with their eyes." Surely a soldier who has tampered with his eyes is a soldier who has committed a crime; and here, in the Articles of War you lay down a rule by which a soldier who has committed a crime is to be dealt with. It appears to me that that ought to be put in the Army Discipline Bill?—With great deference, I will explain in a moment what I have done, although here again I may have made a mistake. There is a punishment provided under the Army Discipline Bill for a soldier who tampers with his eyes.

General Shute.

379. A court of inquiry is held with reference to his discharge?—True; but I am speaking as to Article 83.

Mr. Campbell-Bannerman.

380. The Article of War referred to is this: "Any soldier who shall be convicted of having tampered with his eyes, with intent thereby to render himself unfit for service, shall not be entitled to his discharge or to a pension, but shall be detained in an eye infirmary or military hospital, or shall be sent to his parish or dismissed, according to Our directions given from time to time to Our Commander in Chief"?—I say that that is distinctly not statutory; that is a direction for an Article of War. I have made the offence of a soldier tampering with his eyes an offence punishable under Clause 22, sub-section 2, of the Army Discipline Bill.

Mr. Merewether.

381. As I understand, Clause 22 of the Army Discipline Bill deals with the offence and punishes it; and Article of War 83 says that, independently of that punishment, the man who commits that offence shall not have a privilege which he might have of being discharged?—To say that he shall not be entitled to his discharge or to his pension is certainly not statutory, and therefore I deliberately put that into the Articles of War; and I should be very sorry to see it put into a statute.

Chairman.

382. Will you refer to the second paragraph of the 81st Article of War?—"Any soldier who shall wilfully maim or injure himself, or any other soldier, whether at the instance of such other soldier or not, or cause himself to be maimed or injured by any other person with intent thereby to render himself or such other soldier unfit for service, or who shall tamper with his eyes, with intent thereby to render himself unfit for service, may, on conviction thereof before a general district or garrison court martial, be sentenced to such punishments, other than death or penal servitude, as the court may award." I have

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Chairman—continued.

divided the crime from the consequence of the crime, where the consequence of the crime is what Her Majesty can regulate at any time, and put the former into the Bill, intrusting the latter to be dealt with by an Article of War or Regulation. Her Majesty has a perfect right to discharge or dismiss a soldier without a statutory power.

Colonel Mure.

383. But that applies to officers also; Her Majesty retains the right of dismissal, so that I do not see why it should apply in this particular case. My object is to see whether in this scheme you have clearly defined the work which is to be done, first by the Army Discipline Bill, then by the Army Regulation Bill, and then by the Articles of War, because, as I understand, the principle upon which you have worked, has been to separate those three matters for the purpose of simplicity. I would go further, and point out that on the same page of that index, page 11, there is an asterisk placed opposite Article 92, Clause 32, of the Army Discipline Bill, as to ill-treatment of landlords; that is clearly a military offence which is militarily punishable, and I maintain that that ought to come within the Discipline Act?—I should wish first to take the opinion of the Committee upon Article 83, because this is the very point; I do not think you can have a clearer example of what I have endeavoured to do, whether rightly or wrongly, than in the case of Article 83. Under Article 81, tampering with eyes is made a crime. That being a crime, I have put it in the part appropriated for crimes according to my judgment in the statute; I have transferred it from the Articles of War to the statute, it being a crime. Article 83 appears to me to deserve a different treatment; it is not statutable; it is a direction given by Her Majesty; it requires no Parliamentary power; and therefore I have retained it in the Articles of War. That is the division that I have made.

384. In my copy, opposite Article 92, as to ill-treatment of landlords, Clause 32 of the Army Discipline Bill, there is an asterisk in the column headed "Articles of War," whereas it appears now that this is a misprint?—Do not imagine that I have been able to compare every one of these figures; I am very sorry that it should be so, but it is impossible to insure the absolute correctness of all these papers. I told a very careful draftsman to look through them, and I went through them myself, and I do not know that I could do more.

385. I am not attributing the remotest blame to you; I am only suggesting that, if a member of the Committee cross-examines upon a paper, and there is a misprint in that paper, it is not unnatural that he should be led into a mistake?—Quite so; but I should like to take the opinion of the Committee as to whether they are satisfied with my division of Article 83, because that raises the whole point. The way in which I made that division was this: that where I was satisfied in my mind that a statutory power was not required; where I was satisfied that Her Majesty had the power, and that she had always exercised it under Her prerogative, I have left that under the Articles of War or Regulations to be made under the prerogative. Where I thought that statutory power was required,

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required, or that it was better to put it into the statute, I put it into the statute. You cannot have a better example than Articles 81 and 83 to raise the very question which I have endeavoured to raise.

386. Now I will go to another article, Article 98, as to duelling; there is not the remotest doubt that duelling is a crime both by civil and by military law, and according to my paper that is placed in the Articles of War and Queen's Regulations?—Here, again, the asterisk, I think, ought to be opposite to Article 99. I am sure that I put duelling amongst the crimes. It is in Clause 39 of the Bill, which says: "Every person subject to military law, who (1) fights or promotes, or is concerned in, or connives at a duel, or (2) attempts to commit suicide, shall be liable to suffer any punishment not exceeding imprisonment."

387. According to my paper, duelling is to be put in the Articles of War?—I am very sorry that it is so; in fact I have attempted to do too much; I have attempted to give too much information; that is the real truth.

388. Now we come to Article 99, which deals with "Publicly impugning officers' character or conduct;" and according to my paper, that is an offence which is not placed in the Army Discipline Bill at all, but which is only to be made an Article of War. Now it appears to me that if there is one crime more than another which ought to be placed in an Army Discipline Bill, it is the crime of publicly impugning an officer's character or conduct?—It may be mere pedantry on my part, but I do not consider that a thing ought to be a crime that has no punishment attached to it; this is merely directory; it merely says: "Every officer whose character or conduct as an officer and gentleman has been publicly impugned, shall, within reasonable time, submit the case to his commanding officer, or to other competent military authority for investigation, on pain of suffering such punishment as a general court martial may award." If you consider that that punishment ought to remain I am wrong; I thought that it was merely directory, and that that ought not to make it a crime; if the Committee think that that ought to remain in as a crime, it ought to be put into the Army Discipline Bill.

Sir Henry Havelock.

389. It would illustrate the matter if you would tell us into which part of the Army Discipline Bill you have brought Article 99 of the present Articles of War?—I have not put it into the Army Discipline at all. It seems to me that it distinctly does not create a crime. I should myself put the matter of the Article in an Army Circular or Queen's Regulation if I were at the War Office; but it is a question for officers, and not for me. It is simply this: "If you call me a blackguard and I do not complain to my commanding officer within a certain time, then I am to be tried by court martial." I should have thought that that was a very delicate direction to give, because the question would be whether my character was really impugned, or whether I ought to make a thing a public insult which may have been merely a private insult, which I may wish to condone. I should have thought that it was a question of the most delicate possible character, and that it ought not to have been put

Sir Henry Havelock—continued.

in in the way in which it is put in Article 99; but I again submit to the Committee that it is not for a counsel to give an opinion upon a question of officers' conduct.

Colonel Mure.

390. I do not think that we are at present in a position to argue these questions, and to settle them; we are merely asking you your reasons for doing it?—I have not the least objection to answer the questions, but I do not think that my answers are of any great value on a subject matter such as that which is contained in Article 99.

Sir Henry Havelock.

391. We understand that that provision has not been transferred to the Army Discipline Bill?—It has not.

Colonel Loyd Lindsay.

392. My honourable and gallant friend says that he is so well satisfied with your plan, that he wishes to carry it still further; to use an illustration which has, I think, been already used, there is a basket of apples and pears, and we are putting the pears on one side, and the apples on the other; and what we are now arguing upon is whether some are apples, or whether they are pears?—Certainly. I am happy to believe that it will simply require a small transfer of clauses, whatever amendment the Bill receives.

393. I suppose that some of these things are really subjects of very nice consideration as to whether they will come properly under an Army Discipline Bill or under an Army Regulation Bill?—Certainly, and some of them are merely matters of taste, so to speak. One man will think that they ought to be in one place, and another man will think that they ought to be in another place. It is exceedingly difficult in all drafting to tell where the boundary line can be drawn between similar or quasi-similar matters; and it really is a matter of taste and fancy in a great measure.

394. With regard to Section 29 of the Mutiny Act, may I ask what has become of that section?—That section is intended to be in the Army Regulation Bill; but owing to the Government taking over all the local prisons, I thought that my clause would probably require amendment, and I sent it to Colonel Du Cane to ask him his opinion. I have got the clause drawn, but it is intended to go into the Army Regulation Bill.

395. Mr. O'Dowd, in the evidence which he gave, rather set store upon having the Army Discipline Bill comprised in as few clauses as possible, so as to have it in a very compact form; do you think there is any advantage in that?—With respect to Mr. O'Dowd, his plan was deliberately considered. I still think that when you have to deal with soldiers it is better to preserve the old language where you can; and when we come to consider the clauses, I think you may sacrifice the real welfare of the soldier to a pedantic desire for brevity. So far as I am individually concerned, I always wish to draw in the shortest possible way; but I do not think it is at all advisable to shorten the Bill too much, in the case of the particular offences inserted in the Bill; however, I think that that explanation will come better when we come to one particular set of offences, though I can give an example at once if necessary.

396. With

Colonel *Lloyd Lindsay*—continued.

396. With regard to carrying on this process of dividing the apples and the pears, do you not think that the privileges of soldiers would be better taken out of the Army Discipline Bill?—I think it is very possible that they might go better into the Army Regulation Bill. It is really a question for you officers whether you would like to have them in one place or another.

397. And also with regard to officers not being sheriffs or mayors?—That is one of the very clauses that I had in my mind in giving you my last answer. I put it first in the one and then in the other, and if the Committee like, I can put it back again.

*Mr. Campbell-Bannerman.*

398. You have dealt with the Mutiny Bill and the Articles of War; is there anything in the Queen's Regulations which will properly come into the Army Discipline Bill or the Army Regulation Bill?—I cannot answer so large a question, because I am not very familiar with the Queen's Regulations. I should myself think that the regulations with respect to military procedure would probably find their place better in the Articles of War than in the Queen's Regulations, but it really is not a question that I can answer without looking through them.

399. I presume that you would say, from your knowledge of the Queen's Regulations, that they require re-casting about as much as any other part of the military code?—If I may give an opinion upon that, I think that the Queen's Warrant and the Queen's Regulations must be re-cast to follow this Bill, assuming that the Committee are good enough to approve of it.

*Major O'Beirne.*

400. In your Bill you say that the future military code is to be founded upon the Queen's Regulations as well as upon the Articles of War and upon the Mutiny Act, do you not?—I have not made myself accurately understood, if I have conveyed to your mind that I intended to put the Queen's Regulations into the statute, because I should have suggested exactly the contrary. I do not think that the greater part of the Queen's Regulations, indeed I am not sure that any of them, would properly form part of a statute; they are directions, merely, and not commands enforced by a punishment.

*Sir Alexander Gordon.*

401. It appears to me that we are drifting into this position, that we shall have four different codes; the Army Discipline Bill, the Army Regulation Bill, the Articles of War, and the Queen's Regulations?—You will, at all events, have much less than you have got now; because you have got those, and you have got Army Circulars repeating the same subject matter. If you take the scheme suggested, it would be much simpler, at all events.

402. The Army Circulars and the Queen's Regulations are all subordinate to what Parliament passes; and Parliament does not care what regulations the Queen issues for the army, so long as they are not contrary to Act of Parliament?—Certainly; that is the reason I gave to the honourable Member who asked me about the Queen's Regulations. I do not think that the Queen's Regulations form any part of the code, if by that you mean the statutory  
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*Sir Alexander Gordon*—continued.

code. I said that I had conveyed a wrong impression to his mind if he imagined that I intended to make the Queen's Regulations a statutory code. On the contrary, I think that a great many provisions relating to pay, and penal forfeitures, and military rewards, which have found their place most inaccurately in the statute, and are mere repetition of the Queen's Warrant, ought to be relegated to the Queen's Warrant.

*Mr. Campbell-Bannerman.*

403. I did not intend by my question to imply any opinion in favour of doing it, but it occurred to me that it would be well to ask you whether, as there was a question of taking some things out of the present Articles of War and placing them in the Queen's Regulations, or in new Articles of War of a somewhat different order from the present, there might not also be certain provisions which have got into the Queen's Regulations and which it might be desirable to give more direct statutory effect to?—I could not answer the question off-hand, though of course it will be my duty to look into it eventually. The only answer that I can make is, that I think that court martial procedure would be probably more conveniently put in the Articles of War, and not in the Queen's Regulations.

*Chairman.*

404. But certain provisions now relating to court martial procedure, which are to be found in the Queen's Regulations might be inserted in the Articles of War, might they not?—Yes, that was the answer that I gave to Mr. Campbell-Bannerman; that I thought that very probably the Government might decide upon transferring to the Articles of War some of the Queen's Regulations relating to procedure, as being a more convenient form of issuing them.

*Sir Alexander Gordon.*

405. The Articles of War are headed, "Rules for the better government of Her Majesty's Army;" would it not be convenient to amalgamate the Articles of War and the Rules and Regulations of the Army in one code?—The real truth is, that that was what I wished and desired, but it was entirely opposed, and I was ordered not to do it; and the whole of the evidence was directed the other way; but my personal opinion has been to the contrary.

*Mr. John Holms.*

406. In reply to the honourable and gallant Member for Berkshire, I think you said that you had not dealt with Section 29 of the Mutiny Act; are there any other sections that you have not dealt with?—Yes, a great many; and they will be shown in this paper, which I am sorry to say has so many blunders in it; but you will see those that I have dealt with in that index which I have submitted to the Committee. I have pointed out all the provisions that I have dealt with in the Army Discipline Bill.

*Captain Hayter.*

407. You have even included in your schedule a section which is quite obsolete, viz., Section 64 of the Mutiny Act as to "Billeting the Guards in and near Westminster"?—I am quite aware of that; what I meant was, that I had not put it in the Army Discipline Bill. It is very unfortunate  
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Captain Hayter—continued.

nate that I put the asterisks at all; it was only to show generally whether I thought the provisions ought to go into the Articles of War or not. When we come to re-draw Articles of War, I have no doubt that the Government will see that there are a considerable number of matters that are practically obsolete.

408. There is one as to Spain and Portugal, which is clearly obsolete?—Yes.

Mr. Merewether.

409. In like manner you have altered these extraordinary penal servitude, Clauses 18 and 19, and made them more intelligible?—I have endeavoured to do so, and I hope I have done so.

Major O'Beirne.

410. Anything relating to maintaining the discipline of the army which is in the Queen's Regulations is to be put into this Bill and into the other Bill for the Regulation of the Forces; so that it will be found in either one or the other in future; for instance, all the punishments relating to drunkenness?—No, they are not in the Queen's Regulations; they are in the Articles of War and in the Mutiny Act. If there be any punishment in the Queen's Regulations, it undoubtedly ought to be either in the Mutiny Act or in the Articles of War; but my impression is that there is no such a thing. If there be such a punishment it is illegal.

Sir Henry Havelock.

411. The punishments are fixed by the Articles of War?—I have no doubt that that is so.

Sir Alexander Gordon.

412. Are you aware that for many years the Articles of War were the only rules for governing the army?—Yes, certainly.

413. The Queen's Regulations are a modern invention, I may say, comparatively speaking?—I believe so; but when the Articles of War were the only mode of governing the Army they were distinctly decided to be illegal by the Bill of Rights. I do not think that it is strictly accurate to say that they were the only mode of governing the Army, because I believe you will find that the power of the Marshal's Court was always kept up to a certain degree; but I am not a sufficiently good historian to speak accurately upon the subject.

Chairman.

414. Did the Marshal's Court exist after the time of Henry VIII.?—It did practically; at least so says Colonel Pipon in his book. He says that although the Court of Chivalry was abolished by the attainder of the constable, you can trace the power of the marshal up to a much later period, as I understand it, concurrently with that of the Council of War; but my information is of no value upon these points. I am informed by Mr. Clode that the Queen's Regulations are quite modern, and that the last trial in the court of the marshal is reported in Rushworth's Memorials. It was a trial for duelling in the reign of King Charles I.

Colonel Mure.

415. With regard to the questions that you have been asked as to the apportionment of these different points of discipline and management of the army among the different Bills and Articles

Colonel Mure—continued.

of War, and so on, do you not think that, on the whole, it would simplify matters very much if you more fully carried out the principle upon which these measures are framed, making the Army Discipline Bill a purely penal Act, and making the Army Regulation Bill an administrative Act; and if those matters which, as you have pointed out, are not statutory, and cannot very well come under statute either for administration or for penalty, should be referred to the Queen's Regulations and the Articles of War; because, so far as I have been able to judge from the very cursory view which we have had of these documents, it appears to me that there is throughout these two measures a considerable admixture of matters of penalty and matters of administration, and of matters which are statutory and of other matters which are not statutory?—I have no doubt that the Bill might be better drawn. Part IV., no doubt, might be put in another part, but I should submit that, so far as my ability goes, I have done my best with Parts I., II., and III., and I should deny that there was, generally speaking, anything introduced into these parts which ought not to be found there.

416. Has it been your wish that they should be distinctly and clearly separated?—Certainly; and I should be very glad to carry it out still more fully, and to amend it if you could suggest to me how it is to be done, or where it is inaccurately done.

417. For instance, you have, at the top of page 4 of your Index: "Clause 48, attested recruits triable in some cases, either before two justices, or before a court martial"; you have not put that into the Army Discipline Bill, but you propose to put it into the Army Regulation Bill?—I beg your pardon, I must explain that; attested recruits will be triable before a court martial under the Act which will apply to them when attested. The trial before two justices will be provided for in the Army Regulation Bill, because it is a civil procedure.

418. Clause 48 is, "Attested recruits triable in some cases either before two justices, or before a court martial"; the decision as to that, is to place it not in the Army Discipline Bill at all, but in the proposed Army Regulation Bill; is not that so?—It is not quite so. Every offence triable by court martial is, or ought to be, in the Army Discipline Bill. With respect to the civil trial of those offenders, where there is an alternative of a civil trial, I should myself put it either in the general provisions of the Army Discipline Bill, or in the Army Regulation Bill; this particular clause has not yet been completely worked out, because I have not completed the Army Regulation Bill.

419. So far as this Index is concerned, I should have put it down in both?—So I think it will be, probably; but would you kindly criticise the Bill and not my Index, which I admit is full of blunders.

420. That, I think, is hardly what we are intended to do; in criticising this Index, we criticise the method in which these questions have been separated, and the whole principle of your proposal is, the separation of these matters for the sake of simplicity?—I do not complain of the severest possible criticism, nor do I wish to stop your questions in the slightest degree; but I am bound to say, that although Clause 48 has not been

Colonel Mure—continued.

been properly worked out yet, I do intend to carry out the principle which I ask the Committee to accept.

Chairman.

421. That offence that the honourable and gallant Member has referred to would also be triable under the provisions as to offences with relation to attestation, would it not?—Yes; I confess that it is not properly worked out yet; the direction as to the mode of trial would be dealt with by the Queen's Regulations, but the offender would be technically subject to martial law, and to the civil law. I can go through the section, and explain it exactly. "No recruit, unless he shall have been attested, or shall have received pay other than enlisting money, shall be liable to be tried by court martial;" in other words, the Mutiny Act only applies to attested recruits. That provision will be carried into effect in the Part of the Bill "Application of the Act"; it does not require a prohibition; it is a definition. "But if any person previously to his being attested or enrolled shall, by means of any false answer, obtain enlistment or other money, or shall make any false statement in his declaration, or shall refuse to answer any question duly authorised to be put to him for the purpose of filling up such declaration, or shall refuse or neglect to go before a justice for the purposes aforesaid, or having, in the case of a

Chairman—continued.

recruit dissented from his enlistment, shall willfully omit to return and pay such money as aforesaid, in any of such cases it shall be lawful for any two justices within the United Kingdom, or for any one justice out of the United Kingdom, acting for the county, district, city, burgh, or place where any such person shall at any time happen to be, when he shall be brought before them or him, either to attest such recruit as a soldier, or to sentence him to be imprisoned, with hard labour." That is civil; therefore I shall make it a civil offence as well as a military offence.

Sir Alexander Gordon.

422. But what will be the object of putting that both in the Army Regulation Bill and in the Army Discipline Bill?—Because a case in which a man is to be tried by court martial falls necessarily within the Army Discipline Bill, because it applies to an attested recruit. If an unattested recruit makes a false declaration, he is tried by the civil power.

423. Then you will have to repeat this clause in both Bills?—If I am to separate the civil offence from the military offence, I must repeat it in both Bills.

424. Is not that rather an argument in favour of having one Bill as to the whole?—I have not the least objection; indeed I understood that the Committee wished to have one Bill.

Mr. JAMES CORNELIUS O'DOWD, re-called; and further Examined.

Lord Elcho.

425. You have heard Sir Henry Thring's general evidence as to the principles which he thought it right to adopt in drawing up this new Bill; does it strike you, having to administer the law when it is made, that there is anything that might be altered, or does any suggestion occur to you with reference to the general principles of the arrangement of the Bill which it would be desirable to adopt at all differing from what has been done by Sir Henry Thring?—Speaking of the purely disciplinary part of the Bill, it appears to me that Sir Henry Thring's draft is a great improvement, inasmuch as it in one respect concentrates the crimes and offences to a great extent; but I think that the concentration might be carried out in a better and more complete manner; for instance, I will take an illustration; if you look at Clause 44 of the Draft Bill, "Redress of Wrongs," Sir Henry Thring's arrangement is faulty, to my mind, in this respect; that it mixes up with matters which undoubtedly should be statutory, that is to say, crimes and punishments, matters which are entirely matters of regulation. If you look at Section 44, you will find that it is simply a direction, hardly worthy even of being put in the Articles of War; it is merely saying what an officer is to do in the event of his considering himself wronged; it carries no crime or punishment with it, and I think that it is put in the wrong place. Then if you look at Section 45, there is a direction and a punishment mixed up together; the direction appears to me to be a fit matter for regulation, and the punishment might more properly be included in the category of offences that precede it in the draft. Section 45 says, that if a soldier

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considers himself wronged, he shall take a certain course, and that there shall be a court martial; and that if the appeal made by him is proved to be groundless, he may be punished. So far as my experience goes, that is nearly impracticable; it is very difficult to know what position the man is in before a court.

Chairman.

426. You give those instances where you think provisions are inserted in the Bill, which ought not to be statutory?—Yes; I have cited Section 44, as a case which should be altogether matter of regulation, and not statutory; and I have cited Section 45 as a case which is partly for regulation and partly statutory. I should make Section 45 statutory to this extent, that I would put in the list of crimes punishable by court martial the making of a frivolous and vexatious complaint. That may seem a little arbitrary at first, but as a matter of practice, those complaints are tried now under the 105th Article of War; that is an illustration of the, to my idea, faulty arrangement, by which you mix with matters which ought to be purely statutory matters, which are more or less of regulation, Articles of War, or of procedure.

Lord Elcho.

427. Are there any other general points to which you wish to direct the attention of the Committee?—To my mind, in time of peace, all offences should, as far as possible, be made specific, and I do not think that Sir Henry Thring's category is as full as it might be in that respect. I should like, in time of peace, to avoid, as far as possible,

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possible, recourse to the 105th Article of War, which has reference to conduct to the prejudice of good order and military discipline. On many occasions a soldier is charged with something which is designated conduct to the prejudice of good order and military discipline, when I confess that I have very considerable doubt as to its being to the prejudice of good order and discipline.

Chairman.

428. Are there any other general points that you would like to mention to the Committee?—I do not know whether it would be called a matter of principle, but I do not like the way in which the crime of desertion is dealt with.

429. The arrangement of the subjects is the point to which I should desire specially to direct your attention?—Generally, I think the arrangement is capable of improvement in the manner I have stated, viz., by keeping separate the matters which are statutory and the matters which are the subject of regulation.

430. We may say, then, generally, that you approve of the arrangement?—It is an improvement, I consider, upon the present Bill.

General Shute.

431. You do not mean, I presume, that you would like to do away with the 105th Article of War altogether?—I would like to have a fuller category of the offences that are usually committed, instead of leaving some of them, as is the case now, to be dealt with under the 105th Article of War.

432. But you would still have this as a last resort?—Yes.

Mr. Merewether.

433. You would have less occasion to resort to it?—Yes, to be used as little as possible; I should like to have the crimes specified as far as possible.

Sir Alexander Gordon.

434. Are you not aware of the dangers of over-legislation?—Perhaps I had better answer you by referring to one or two crimes. One very common crime is breaking out of barracks, and another is resisting an escort. Those two crimes are now triable under the 105th Article of War; it depends upon the Judge Advocate General for the time being whether he would consider a charge for one of those offences a good charge without the words "conduct to the prejudice of good order and military discipline." Some would and some would not uphold a charge of that kind, and that gives rise to confusion.

435. Is there any Judge Advocate General who would think that breaking out of barracks was not an offence against military discipline?—There have been Judge Advocates General who have decided that no man should be punished for an offence not specified in the Mutiny Act or Articles of War, and that that was not an offence so specified.

General Shute.

436. Is not that rather a reflection upon the Judge Advocates General of the army?—I should say not. I should say on the contrary, that it is for the protection of the soldier, and a very wholesome protection it is, that he should be distinctly told the particular Article of War he is charged with violating.

Sir Henry Havelock.

437. With regard to what you said just now, would it meet your view if the application of the 105th Article were limited in time of peace to crimes which were sent before a district court martial instead of a regimental court martial?—That rather opens the question of regimental courts martial altogether, which is a large one.

438. Without going into the question of the utility of regimental courts martial at present, I presume that it would be limiting it somewhat in the direction which you desire if crimes under the 105th Article of War in time of peace were only cognizable by a district court martial?—If you mean that a district court martial would be less likely than a regimental court martial to pronounce conduct to be contrary to good order and military discipline, that is not so, the limitation would, of course, have an effect. But as regards the general question of putting aside as far as possible the 105th Article of War, I should say that a very few additional lines would meet most cases.

Major O'Beirne.

439. A soldier knows perfectly well what is contrary to discipline; he is informed of it on various occasions, and the Articles of War are read out once a month, are they not?—Yes. To give you an instance, I have seen a man tried for conduct to the prejudice of good order and military discipline in making a complaint, which was a perfectly just complaint, which was redressed, and for which he got 168 days' imprisonment with hard labour.

Sir Henry Havelock.

440. Was it not subsequently quashed?—He had undergone three-fourths of the imprisonment before it was quashed.

Sir Alexander Gordon.

441. But that is the fault of the administration of the law, and not of the law itself?—I think it is somewhat the fault of the law, because it allows of maladministration.

Sir Henry Havelock.

442. Was that tried before a regimental court martial?—It was tried before a district court martial.

443. Was the case in the first instance tried by a regimental court martial?—No.

Major O'Beirne.

444. Do you think it would be possible to put everything that a soldier did contrary to discipline into one Article of War?—I should try and specify all the usual offences categorically. I should like to put all the offences that are generally committed in by one name instead of leaving them to be dealt with in the Devil's Clause, as it is called.

Colonel Mure.

445. Having specified as many offences as can be easily defined, you would admit that you cannot specify all, and that there may be grave offences against discipline which you could not very well define?—Decidedly.

446. Do you mean to say that, whether the army is at home or abroad, you would withdraw from the authorities the power of dealing with such offences?—

Colonel Mure—continued.

offences?—I have not said that. I should like to see what corresponds with the 105th Article of War expunged; I merely say that it ought to be resorted to as little as possible, and that therefore your category of offences should be as complete as your experience enables you to make it.

447. You would not expunge the 105th Article of War?—No.

Colonel Loyd Lindsay.

448. Referring to a matter which is rather a matter of detail, but which is still important, the 44th section of the present Military Act, which has reference to recruits taken before justices, says that: "Every person so enlisted, as aforesaid, shall within 96 hours, but not sooner than 24 hours after such enlistment, appear, together with some person employed in the recruiting service, before a justice of the peace, not being an officer of the army, for the purpose of being attested as a soldier." The reason I refer to this is, that it is constantly difficult to know what an officer of the army is. With a view of putting it correctly into the new Bill which we are framing, could you give a correct interpretation of what an officer of the army is?—I think the law officers have decided that an officer of the militia is not an officer of the army for the purposes of this section; but that was before the officers of the militia were included in the Mutiny Act. Whether the fact of their being included in the Mutiny Act makes any difference, I do not know.

449. Is an officer on half-pay held to be an officer of the army?—To the best of my recollection, it has been ruled that an officer on half-

Colonel Loyd Lindsay—continued.

pay is an officer of the army within the meaning of this section.

450. Then, again, is an officer on the retired list of generals, under the Warrant of last year, included in the officers of the army?—It is a question for a lawyer, upon which I would rather not speak very dogmatically. I think the meaning of it is that every recruit should, before he has finally passed into the service, have an opportunity of stating his objections before a person not in military service, or supposed to be anxious, for military reasons, to obtain recruits by other means than those which are strictly correct.

451. Would you think it desirable that in any fresh Act of Parliament those words should be more clearly defined?—I think so; I think that all words that are doubtful should be more clearly defined if possible.

Major O'Beirne.

452. Were not officers on half-pay under the Mutiny Act 20 years ago?—No.

Mr. Merewether.

453. You have called attention to Clause 44 in the new Bill; I should like to call your attention to the fact that that clause is already in the Mutiny Act as far as India is concerned; and therefore perhaps you would be kind enough to consider whether it would be well to leave it out of the Mutiny Act in which it already is?—I consider as a matter of arrangement, that it is in the wrong place, to begin with, and I think it is very doubtful whether it need be in at all, in any place.

Mr. CHARLES M. CLODE, re-called; and further Examined.

Chairman.

454. You have heard the evidence which has been given by Sir Henry Thring, or at least the greater part of it, and also the evidence which has been given by Mr. O'Dowd; I should be obliged to you if you would state to the Committee any general observations that you may have to make upon the subject?—I have great difficulty in doing so, because I really have not seen the Bill; but I should be extremely happy if the Committee thought it would be of the least assistance to them, to read the Bill, and at any time that they think proper to come before them and give any explanation that I can. Perhaps the better way, if my evidence is to be of any use now, would be for the Committee to put to me any particular question which has arisen out of the evidence which they have already heard. The only point that occurs to me to remark upon is the question of enumerating all offences; practically I think that is almost impossible, because the whole theory upon which the army is governed is obedience; a soldier is bound to obey every lawful command under the 38th Article of War, and practically it is impossible for you to say what command a general may, from the necessities of the case, give to a soldier, and his disobedience to that particular command is an offence. Therefore it would be practically impossible by any legislation to define all the acts or the omission of all the acts which should be an offence.

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455. Then you think that the words of the 15th section of the Mutiny Act, "or shall disobey any lawful command of his superior officer," are of themselves almost sufficient to cover any offence?—I think so. According to the decision of Lord Mansfield, in the case of *Sutton v. Johnstone*, reported in the Term Reports, a man is bound to obey, at the peril of punishment, almost any order. It may, of course, be a question for a civil court at the same time to define the line between military duty and civil obedience, and a very difficult line it would be to define; but I do not think that you can by any code define all the acts. The only other question that I heard raised was the one by Colonel Loyd Lindsay with regard to the enlistment of men. I may remind the Committee that that clause was put in, I think, in about 1735, under totally different circumstances from those which now prevail. Formerly the commanding officer of every regiment was bound to keep his regiment complete, and he had a certain sum of money given him in order to supply the regiment with recruits. Therefore it was considered necessary to protect the recruit from being hastily enlisted by the officer, which of course he might have been if there had been no person interposed before the officer could bring him into the ranks. Hence it was necessary, before the recruit changed his civil status, that you should have the adjudication of a civil magistrate

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magistrate upon the fairness of his "enlistment," and from this the theory of "attestation" arose. In bringing in the civil magistrate you necessarily excluded the officer; for the protection of the recruit, we have always held at the War Office that the person before whom the recruit should be attested should be a man absolutely free from the service, and we have generally said, I think, that a half-pay officer is still an officer of the army.

Colonel Loyd Lindsay.

456. Do you consider it advisable that those words should be kept in the new draft Bill?—Whether they are necessary is rather a question of expediency than otherwise. The officers have now so little to do with filling the ranks, that I should think they might very safely be trusted to attest their recruits. The analogy is that of the militia, where a militia officer can enroll his soldiers into such service; and the nearer you approach in the army to the militia, so much the less do you need the old precautions that used to exist to protect the soldier on coming into the ranks of the army.

Sir Alexander Gordon.

457. Is not the clause, as it now stands, a protection against any little trickery on the part of recruiting people?—No doubt it is. One of the great abuses which are supposed to have existed before the enactment of the Mutiny Act was men being impressed into the service. Of course when you formed an army upon a constitutional basis you gave the citizen every possible protection against being brought into the ranks hastily. It was Sir Walter Bagot who proposed these clauses against the hasty enlisting of recruits.

Colonel Loyd Lindsay.

458. But now that not only militia officers, but volunteer officers receive the Queen's Commission, would it not be rather difficult precisely to define in the Mutiny Act what an officer is?—I do not think that there would be any difficulty of definition.

459. How would you deal with half-pay officers and generals on the retired list; would they be counted as officers or not?—Yes, we have held it to be so. If I remember rightly, at Woolwich, in 1846, there were a good many enlistments of that kind, which we had to cover by a special enactment in the Mutiny Act.

460. Would a recruit's enlistment be invalidated if he was attested before an officer?—Yes, except that it is saved afterwards by Section 59 of the Mutiny Act, that a man is not at liberty, after six months on the pay-list, to dispute his enlistment. That was put in, if I remember rightly, in 1859.

Colonel Mure.

461. But it is only his attestation which is to be performed before a civil justice of the peace, not being an officer?—That is all.

462. Practically speaking, that danger does not now exist?—I should not think so.

Colonel Loyd Lindsay.

463. Then you would see no objection to leaving out the words, "not being an officer of the army"?—I should see very little objection to it.

Colonel Mure.

464. I suppose that this restriction has no practical effect upon recruiting?—In some isolated districts, I hear sometimes of complaints that the recruiting serjeant has a difficulty in getting his recruit before the justice in time. The man possibly changes his mind in the meantime, or something of that kind.

Sir Alexander Gordon.

465. The two first words of this new draft Bill open up to my mind a very important question; I refer to the words, "every person" being used, instead of the words that were formerly used, "every officer and soldier;" can you give the Committee any information as to the effect of using the terms, "every person," instead of "every officer and soldier"?—I think that you will find that defined by the Interpretation Clause, which Sir Henry Thring has afterwards got. I see that it is sometimes, "every person subject to military law," and sometimes "every person subject to this Act," and so on. The Interpretation Clause would, I have no doubt, remove any difficulty, if there should be any; but I have not studied the Bill. I do not think there would be any difficulty arising from that word.

466. Would you propose that all civil officers, such as chaplains and all other civilians employed with the army, should be subject to all the provisions of the Articles of War?—Chaplains are commissioned officers.

467. But are they under the same category; are they liable to be tried for an infringement of all the military rules?—I am afraid they are.

468. Is it a fair thing that civilians who have no means of knowing what military rules are, should be liable to be tried by a court martial?—No doubt a civilian ought not to be; but of course when he joins the army, you must assume that the first thing he does is to study the military code.

469. Why should a chaplain study, for instance, the duties of an officer on guard, or garrison orders, for disobedience of which an officer is liable to be tried; surely a chaplain or a commissary is not to be expected to study all those military rules, and yet by the wording of the Act they are liable to be tried by court martial for an infringement of any of those rules?—They would be now under the present Mutiny Act.

470. That has grown up, has it not?—Yes, no doubt we have very much enlarged the liability to the military code of persons serving with the army.

Colonel Mure.

471. I see that this word "person" is not defined?—The person must be not only a person, but he must be a person who is either commissioned or in pay; you must not take the word "person" only. The nominative case there, I apprehend, is "every person subject to military law." Then you must go to the end of the Act for a definition of the persons subject to military law.

Mr. Merewether.

472. It is the same as Section 2 of the Mutiny Act, I think?—Yes, I think so.

Colonel Mure.

473. After all, it merely says that every person

Colonel Mure—continued.

son who is subject to military law is liable to be tried and punished?—Yes.

474. Is it not quite evident that it would be impossible for a commanding officer to maintain discipline in his camp unless those persons who were not actually soldiers were also subject to military law in cases where there is no other law to appeal to?—No doubt. That was what the Duke of Wellington, in 1808 or 1809, came to Parliament for, namely, increase of power in cases of embezzlement by the store officers. When he was in the Peninsula, of course he could not appeal to the civil tribunals of Portugal to try his commissaries or store officers; but he came to Parliament for an extension of these clauses which gave a court-martial the power, not merely of adjudicating upon an officer in regard to a military offence, but also of adjudicating upon him for the civil offence of felony, and made him liable to transportation.

475. Practically, unless you could define the cases in which it is necessary that the commanding officer should have power over civilians and those in which it is not necessary, it would be impossible, would it not, to refuse to a commanding officer that power?—You must have some word, and what other word could you have? If you have "soldier," you must have a "definition" of that; it is "enlisted or in pay." Is there any difficulty in saying that a person subject to military law shall be triable under this Act, and then going to the subsequent section to show who that person is.

Sir Alexander Gordon.

476. Are you aware that by the 17th section of the Mutiny Act, a civil officer can only be tried for embezzlement, or making away with stores, and that he cannot be tried for any other military crime?—Those words were put in, I think, in the time of the Peninsula War.

477. That section would imply, would it not, that they could not be tried for an ordinary military offence?—I do not think so; it is rather giving a special remedy, I think, against a commissary.

Colonel Mure.

478. Practically speaking, at home, civilians who are attached to a camp for any purpose, are not generally treated under military law, are they?—In England of course they would not be. If I remember rightly, in the Autumn Manœuvres Act they were made liable. (See 35 & 36 Vict. c. 64, s. 13.)

479. Was that Act an annual Act for the purpose?—It was only a temporary Act.

480. But except under special enactment, civilians at home attached to camps or to the army generally, are subject to civil, and not to military law, are they not?—Certainly.

481. Therefore, practically speaking, except in cases of special enactment, it is only abroad or on service that civilians attached to a camp are subject to military law?—They would not be so there unless you made them so by legislation.

482. Supposing that I am a commanding

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officer on service in Kaffirland, do you mean to say that Parliament has to pass a special Act to bring those persons under military law?—I do.

483. Where is the Act which has been passed lately applying to those men serving in Kaffirland?—If I may revert to what passed when I was last examined, when the honourable and learned Member who is now absent was in the Chair, he referred to a perfectly well established case decided by an opinion of the Law Officers of the Crown (which is printed in Vol. 1, page 535, Military Forces of the Crown), that sutlers with General Hawley's army in Holland, in 1745, were not liable to trial by court-martial.

484. That was abroad?—Yes.

Sir Henry Havelock.

485. That was in time of war?—Yes, in time of war.

Colonel Mure.

486. Has not an Act been passed since that?—Yes.

487. But it is not a temporary Act?—No, it is not a temporary Act.

488. One would understand at once that with the autumn manœuvres, you would require a special or temporary Act; but without that Act at home all civilians attached to the army are subject to the civil power?—Certainly.

489. But abroad on service, the Mutiny Act, or some other special Act, which is not a temporary Act, but a permanent Act, covers the authority of the military commander over civilians in his army?—If I may explain myself, you cannot make those men liable to military law without statutory authority.

490. But it exists?—If it does exist.

491. But does it exist?—It used formerly to do so; I do not know how the Mutiny Act stands at the present moment, but it used to apply to sutlers and other people.

492. But at this moment we have war going on in a colony; I do not know what are the relations between colonial law and home law, but I suppose it is perfectly clear that General Thesiger at the Cape of Good Hope has authority over his civilians under a permanent statute?—It is only in the Mutiny Act.

493. So that, practically, the existence of that word "person," even although not defined, excepting in so far as it means a person under military law, does not really infringe the liberty of any one person?—I do not think it does.

Lord Elcho.

494. Had that temporary Act for the autumn manœuvres anything to do with the discipline of the persons engaged?—Yes, I think that we had a section which made the camp followers, and people within the area of the camp, liable to the Mutiny Act.

495. Were the general powers under the Mutiny Act insufficient?—Yes. I have not looked at it for a long time, and I am only speaking from impression; but that is certainly my impression.

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Sir HENRY THRING, K.C.B., recalled; and further Examined.

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Lord Elcho.

496. WHAT is your view upon the point which has just been put to Mr. Clode?—As a matter of practice I do not consider that people with the Army are recognised as sutlers and followers. For instance, if an old woman is walking with the Guards through Westminster, you do not consider that she is a sutler. When we came to the autumn manœuvres, when the Army was actually going to be mobilised, as the phrase is, in order to remove all doubt, we put in special words; but there is no doubt that when the army is in the field, the sutlers are subject to military law.

Sir Alexander Gordon.

497. Are you aware that previously to 1863, when the Indian Mutiny Act was abolished and amalgamated with the Imperial Mutiny Act, sutlers had never been included in the Imperial Mutiny Act?—I know nothing about the history.

498. If you look at the Mutiny Act of 1862 you will find that it did not apply to sutlers or followers of the army in any part of the world; but the last Indian Mutiny Act, which was repealed in 1863, did apply to sutlers in India, but nowhere else of course. When the two Acts were amalgamated, the Indian clause was added to the Mutiny Act, but the provisions as to sutlers and followers only apply to the Indian forces and not to the Imperial forces; is not that so?—I am not able to answer the question. (Mr. Clode.) The change was made by the late Mr. Herman Merivale and myself. We had the two things compared very carefully, namely, the Indian Mutiny Act with the Imperial Mutiny Act; we took out of the Indian Act all the matter that was in the Imperial Act, and then added the residuum to the English Mutiny Act.

499. But did you intend to add to the Imperial Mutiny Act a proviso which had hitherto only been applicable in India with regard to sutlers and followers?—There was no intention of altering it in any other respect than to bring in the troops that were amenable to the Indian Act, and which had not been hitherto amenable to the English Act.

500. The intention was to leave the Imperial Mutiny Act precisely as it had been?—Certainly.

501. Are you aware that by the re-drafting of the Articles of War for 1863, and the introduction of a stop, the provisions applicable to sutlers in India were made applicable to the whole Imperial forces, but that that was only done in the Articles of War, and not in the Mutiny Act?—I was not aware of it.

502. If you look at the Articles of War for the year 1863, you will find that by the introduction of a stop or a pause, the latter part of the clause is made applicable to the whole Imperial forces, although it is not so in the Mutiny Act itself?—I have no doubt that is so, and I will look at it.

503. Can you tell the Committee why the application of the Articles has been omitted from the Articles of War in the last two years?—No, I am not aware. The Articles of War are usually altered and amended by the Judge Advocate General.

Colonel Mure.

504. (To Sir Henry Thring.) Is it not the case at present that the followers of the army are legally under the Mutiny Act, and therefore are subject to the authority of the commanding officer of the camp or army?—Certainly.

505. Under this Mutiny Act persons connected with the army who are not military officers or soldiers are legally under the authority of the Commander in Chief of the camp or army; but practically that authority is not exercised over them at home, and therefore in practice, although the legal power exists, it was necessary for the Autumn Manœuvres Act clearly to define the power as applicable in certain cases where an army is mobilised or formed; is not that the case?—All licensed sutlers and followers in any of the forces are liable to the Mutiny Act.

506. Then why was it necessary to pass this temporary Act for the Autumn Manœuvres?—I believe, so far as my recollection serves me, in the absence of the Act, that when we drew the Autumn Manœuvres Bill it was considered right to draw attention to the fact that sutlers and followers of the army would be subject to it, for the purpose of giving warning to the people who were following the troops, and who at that time we thought would congregate in great and inconvenient numbers, that they would be liable to the Act, and be subject to discipline. As a matter of practice I believe that the Act has never been enforced at all against them, but I cannot say that it has not.

507. Therefore the virtue of the Act at home had to a certain extent been weakened owing to its not having been applied?—It is not a question for a counsel to answer, but I believe that they never have of late years enforced the Mutiny Act against anybody but officers or soldiers.

508. But abroad the power not only exists as it exists at home, but is in use; and you do not require any special Act to enable a commanding officer of the forces in our colonies or abroad to exercise his dominion over civilians?—I can only answer the legal question. An officer abroad commanding English troops has most undoubtedly power, under the Mutiny Act, to control, or whatever epithet you like to apply to it, all licensed sutlers, and all followers of any of the forces.

509. Therefore, practically speaking, the word "person" not being defined, but the word "person" as it exists there, giving this power over civilians, but the power not being used at home over civilians, there is not the remotest harm in the existence of this word "person" undefined in the Bill, is there?—I do not understand the question.

510. This word "person" being undefined, gives very great power, does it not?—It is defined.

511. But it includes civilians, does it not?—It includes licensed sutlers and followers of the forces.

512. The fact is, that this power, existing at home, but never being practised, and only being practised abroad, civilians at home are practically not placed under martial law?—I have explained in my notes with respect to the use of the words "persons"

Colonel Mure—continued.

"persons subject to military law," which is in the draft scheme, my reason for using that term; but in my judgment I have not altered the law one iota by the use of the term.

513. I am defending the existence of the word "person," and the manner in which you have used it, against an expression of disapproval on the part of the honourable and gallant Member, who thought the word "person," as existing, would give a military commander at home too much power; and I maintain that it would not, for the reason that the power is practically not exercised at home?—It gives him neither more nor less power than he had before.

Sir Alexander Gordon.

514. Do not the words which you quoted "and to licensed sutlers, and all followers in or of any of the said forces," apply to Her Majesty's Indian forces, apart from the Imperial forces, that being the clause which was added in 1863, when the Indian forces were amalgamated with the Queen's forces?—I can only answer that I do not understand it so.

515. "All the provisions of this Act shall apply to all persons belonging to Her Majesty's Indian forces, &c., and to all licensed sutlers, and all followers in or of any of the said forces." That means the Indian forces, because this bracket or hyphen separates that clause from the rest of the clause, and the rest of the clause is exactly as it stood in 1862; and in 1862 there was no mention of sutlers or followers, and there never has been in the English army?—I can only answer that very likely you are right; but it has not been construed so. It is divided in this way, "or who are or shall be serving in the department of Engineers, or in the corps of Sappers and Miners, or pioneers, or as military surveyors or draughtsmen, or in the Ordnance or Public Works or Commissariat Departments, and to all storekeepers and other civil officers employed under the Ordnance, and to all veterinary surgeons, medical storekeepers, apothecaries, hospital stewards, and others," &c.

516. That applies to the Indian army only;

Sir Alexander Gordon—continued.

there are, no such people as medical storekeepers, apothecaries, and hospital stewards in the English army; that is a term taken out of the Indian Mutiny Act?—I am not competent to answer that question. (Mr. Clode.) I have no doubt that you will find that this is simply extracted from the Indian Mutiny Act. I remember that is the way in which we amalgamated the two. (Sir Henry Thring.) Then I am bound to say that I have construed the Act wrongly.

Sir Henry Havelock.

517. With regard to this point, in defining the persons who are subject to military law, your clause does not make a distinction between Her Majesty's forces and Her Majesty's Indian forces, but it includes the whole, bodily?—I admit that I have misunderstood it, supposing that Sir Alexander Gordon is right, and Mr. Clode, who is a very good authority, thinks he is.

Sir Alexander Gordon.

518. If the Mutiny Act is, as has been supposed, and not as I read it, it applies during peace as well as during war, and at home as well as abroad?—Certainly.

519. I observe in the interpretation Clause: "The expression, 'Her Majesty's forces in India' means [ ]," and "The expression 'Her Majesty's Native forces in India' means [ ]." Why was no interpretation put in of those two expressions?—Simply because I had not time. I intend to fill them up before the Committee get to that.

Colonel Mure.

520. Then it appears that after all that we have been told by Mr. Clode and by yourself in regard to that special Act having been passed as to the Autumn Manœuvres it was not required?—Assuming Sir Alexander Gordon's construction of the Mutiny Act to be right, I was wrong in interpreting this to apply generally; and therefore I was wrong in the answer that I gave you with respect to the Autumn Manœuvres; but I think it very doubtful.

Sir  
H. Thring,  
K.C.B.  
4 June  
1878.

*Tuesday, 18th June 1878.*

MEMBERS PRESENT :

Mr. Campbell-Bannerman.  
Lord Elcho.  
Admiral Egerton.  
Sir Alexander Gordon.  
Sir William Harcourt.  
Sir Henry Havelock.  
Mr. Herschell.  
Mr. Staveley Hill.

Mr. John Holms.  
The Judge Advocate General.  
Colonel Loyd Lindsay.  
Mr. Merewether.  
Colonel Mure.  
Major O'Beirne.  
General Shute.  
Sir Henry Wilmot.

SIR WILLIAM GEORGE GRANVILLE VERNON HARCOURT, Q.C.,  
IN THE CHAIR.

Sir HENRY THRING, K.C.B., re-called; and further Examined.

Sir  
H. Thring,  
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18 June  
1878.

*The Judge Advocate General.*

521. WILL you explain to the Committee, as fully as you can, the circumstances connected with the preparation of the new Papers which have been laid before the Committee, and also their particular scope and object?—Since the last meeting of the Committee, I have circulated three Papers; one is a short memorandum; another is a Paper which I call "Index No. 1," and another is a Paper which I call "Index No. 2." The object of those Papers was to satisfy, as far as I could, and as far as I understood them, the wishes of the Committee. With respect to Index No. 1, it contains, first, the scheme of a Military Law Consolidation Bill, and secondly, the scheme of an Army Enlistment Bill. I ought to state, before I go into these schemes, that on looking through the whole of the military law (using that term in its most comprehensive sense), I found, as I think I stated before to the Committee, generally that it consisted of a series of permanent Acts, as well as the Mutiny Act and the Articles of War. The permanent Acts notably consist of the Enlistment Acts, and those Acts have been very inartificially, but for convenience from time to time, altered by the Mutiny Acts. On the whole, I submit to the Committee (although it is entirely a question for them) that the Enlistment Acts had better be put into a permanent statute, and kept separate from the Military Law Consolidation Bill. Of course they will be bound up in the same book, and they will be indexed in the same way as hitherto; but I think I could show to the Committee, when we come to the consideration of the enlistment provisions, that it is better that they should be in a permanent statute. The general reason for that is this: that the period of enlistment extending over 12 years, the conditions of the enlistment are necessarily permanent for 12 years, and that three of the Acts are permanent Acts; that is to say, the Acts of 1847, 1867, and 1870; therefore I think they had better be in a permanent statute. I should also state to the Committee that this

*The Judge Advocate General—continued.*

suggestion does not involve any question of principle; it is a draughtsman's question, and it is really a mere question of convenience. I should submit most confidently to the Committee that the whole of the enlistment provisions ought to be all together in some one statute or other, because at the present moment it is very difficult to understand them; they are contained in the above-mentioned three permanent Acts, and then they are altered up and down, with out any arrangement whatever, in the Mutiny Act. However, I will only state, for the convenience of the Committee at the outset, that I have taken out the Enlistment Acts, and I have put them in what is proposed to be a permanent Bill. I now propose to direct the attention of the Committee to the scheme of the Bill called the Military Law Consolidation Bill. The name was suggested by Sir William Harcourt, and the object of that Bill is to contain the whole of the law now contained in the Articles of War and the Mutiny Act. When I speak of the whole of the law contained in the Articles of War and the Mutiny Act, I beg that the Committee will not understand me literally; but I mean the whole of the law which, as I have already stated, I submit ought to be contained in a permanent statute. Therefore it is proposed that the Military Law Consolidation Bill shall contain the whole of the law that is now contained in the Mutiny Act and the Articles of War, with the exception of the enlistment clauses, to which I have above referred. I have drawn this scheme in accordance with the wish of a member of the Committee, who desired to see the whole scheme laid before the Committee, and I have endeavoured to do it in this wise: If the Committee will be good enough to look at Index No. 1, they will find that the plan upon which I have gone has been this: I have arranged in order the marginal notes of the whole of the intended Bill, so that assuming Scheme No. 1 to be approved, Index No. 1 will be an index to the whole of the Bill. I have not

*The Judge Advocate General—continued.*

not circulated the Bill, because, as I have stated in the memorandum which I have addressed to the Committee, I have not been able to finally settle all the clauses; but for the purposes of the consideration of the Committee, Parts I., II., III., and IV. of the Military Law Consolidation Bill are identical with Parts I., II., III., and IV. of the Army Discipline Bill, which I have circulated to the Committee. Part V., as to military prisons, Part VI., as to billeting, recruiting, and the moving of troops, and Part VII., as to legal proceedings, are new, those being the clauses which I proposed to the Committee at first to put in the Army Regulation Bill. Part VIII. is Part V. of the Army Discipline Bill, which has necessarily been put at the end, as it relates to saving clauses and definitions. So that if the Committee will be kind enough to consider the Army Discipline Bill before them, they will then be considering the first four parts of this Military Law Consolidation Bill. I have got the additional clauses throughout drawn; I have also got the Enlistment Bill drawn; but as I stated just before the Committee last adjourned, it has been absolutely impossible to settle the clauses with that accuracy with which they ought to be settled, and they are only in the form of consolidated clauses, which I have drawn myself. I have had them looked through by one of my best draughtsmen, but I have not yet been able finally to settle them.

*Chairman.*

522. Do I correctly understand, then, that this new Military Law Consolidation Bill will contain the whole of your original Bill, plus the Army Regulation Bill minus the Enlistment clauses?—That is so.

523. This Bill will be, in fact, the whole of what you originally called your Army Discipline Bill and your Army Regulation Bill, excluding only the clauses relating to enlistment?—That is so.

524. Is there any special reason why the enlistment part should not also be another section of the same Bill?—The reason is this: that at the present moment the enlistment clauses are contained in three permanent statutes, the Enlistment Act of 1847, the Enlistment Act of 1867, and the Enlistment Act of 1870. Those statutes are necessarily in their effect permanent for 12 years at least, because the whole system of enlistment extends over 12 years. They have only been amended for convenience sake in the temporary Act; and as I had to choose between putting the whole in a temporary Act, or putting the whole in a permanent Act, I thought it was better to put them in a permanent Act by themselves rather than in a temporary Act. All that I should submit with confidence to the Committee is that they ought to be all together in one place or the other.

525. As regards its being a temporary Act, of course it is an Act that is brought into operation by an annual Bill; but there would be no special advantages, would there, in keeping the enlistment clauses in a more permanent form; because, practically speaking, if the annual Bill were not passed, the whole fabric would fall to pieces?—I think it is the merest matter of taste.

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*Chairman—continued.*

At first I intended to put them in one place, and then I thought on the whole they had better go in the other. It is only for the Committee to move them in as part of the Act.

526. Supposing that this scheme of putting the whole of the military law, with the exception of the enlistment clauses, into one Bill is accepted by the Committee, is there any reason why now we should not go on with Bill No. 1, as it is called here, and consider the clauses?—Not the least.

527. The clauses are, practically speaking, the same as those of the Army Discipline Bill?—Exactly the same; I have not altered them at all; the first four parts of the new Bill, as I call it, are identical with the first four parts of the other Bill.

*The Judge Advocate General.*

528. The first four parts have not been altered from the form which they assumed at first?—Not in the least; I have only called it the Military Law Consolidation Bill.

*Chairman.*

529. Upon mature consideration, you regard this as the best form of dealing with the discipline clauses, and with what we have hitherto called the regulation clauses?—I really have no strong opinion upon it; I have done it rather in deference to what I understood to be the opinion of the Committee; I think it is quite immaterial how many Bills you split them into; the real question seems to me to be, what will be the most easy way for Parliament to deal with this question when it has to alter the Bills, because, of course, they will require alteration; it is idle to suppose that we can make a perfect code at once. The practical question is this: the smaller the Bills are the more easy are they to be altered by Parliament; because when, for instance, the Military Law Consolidation Bill comes before Parliament with 200 or 230 clauses, whenever that Bill is altered it makes, as you know, an alteration in the whole Bill, and it ought to be reprinted; on the other hand, supposing that you had a number of little Bills, for instance, an Army Discipline Bill, and then an Army Enlistment Bill, and then an Army Regulation Bill, you could alter each of those Bills separately without disturbing the organization of the other Bills; so that the question is really a practical question; personally, I think that you may make your Bills too large; however, as I understood that the Committee wished to have it all together in one Bill, I put it in one Bill.

530. Let us understand the alternative: this Bill may either be one Bill or two Bills; if it is one Bill it would consist of Parts I., II., III., and IV., together with Part VIII.?—Certainly.

531. Those five parts would make one Bill, and Parts V., VI., and VII. would make the other Bill?—Yes, and then you would have an Army Enlistment Bill, or you might group the Army Enlistment Bill with the second Bill.

532. Therefore you may have one Bill, or two Bills, or three Bills?—Yes; I should say one, two, or three would be the division; but it is not very material, except for the reason I have already given.

533. What you mean is that, with reference to these civil provisions, such as billeting, movement of troops, and so on, they are more likely in the

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the future to be subject to alteration than the clauses referring to discipline?—Certainly. Take the question of billeting; I do not pretend to understand the details of billeting, but you go into the prices which a soldier pays for his dinner, and so on, and that must necessarily be altered.

534. The movement of troops, also, is a thing as to which you may make alterations?—Yes.

535. Then you say that it might be more convenient to have the provisions which are likely to be subject to frequent alterations put in a separate Bill, so as not to bring the discipline clauses also under consideration when it is proposed to amend the Bill?—That is so. I should hope that the Army Discipline Bill, after the consideration which it would probably receive at the hands of Parliament, would, at all events in a very short number of years, become practically permanent, and would not be altered.

536. You would rather adhere to your original conception of keeping the discipline clauses in one Bill, and the regulation clauses in another?—Personally, if I were allowed to do exactly as I liked, I should call the whole thing a military code; and I should distinguish its constituent parts thus: Military Code, Army Discipline Bill, No. 1; Military Code, Army Regulation Bill, No. 2; Military Code, Enlistment Bill, No. 3. I should consider it all to form part of the same code, but that the provisions would come before Parliament as separate Bills whenever they required to be altered. As I have already stated, I should hope that, if the labours of the Committee are of the value that I anticipate they will be, the Army Discipline Bill will acquire, not immediately, but after a year or two, a permanent form. The other Bills must in the very nature of things be altered, as the price of provisions, and the custom of billeting, will be altered; but it is a question entirely for the Committee, and I attribute no importance to it beyond what I have already stated.

*Lord Elcho.*

537. And that could be done without any overlapping and repetitions?—I think so. Supposing that I am instructed by the Committee to do so, it will be my duty to make the code one, but the Bills separate; that is the way in which I should myself do it, supposing that I exercised my own discretion. But whether it be in one Bill, or two Bills, or three Bills, is really comparatively immaterial. I should like to separate them, because I think that we should get the code in a better form at an earlier period. There is great inconvenience in altering very large Bills, and I speak without any prejudice on the point, because I believe I am the draughtsman who introduced these very large Bills, the reason being that you can often pass a large Bill through Parliament more easily than you can pass two or three small Bills.

*Chairman.*

538. You have the separate stages of each?—You have the separate stages of each. Therefore, I presume that my masters, the Government, would prefer one Bill, because it is easier to pass through Parliament. But, if you ask me my personal opinion, I think it is more convenient to have small Bills.

*Mr. Herschell.*

539. You would gain an immediate advantage when you first passed the one Bill, but you would be subject to disadvantage every time that you wanted to alter it?—I think so; you have either to amend a large Bill, which is very inconvenient, or you have to keep re-passing small Bills.

*Chairman.*

540. But when you talk of amending a large Bill, that is only the case in the first stage of passing the Bill; for instance, supposing that a large Bill is passed and has become an Act; if it is proposed to make an amendment to it with reference to billeting, or the movements of troops, that amendment is made by means of a separate Bill, and it becomes therefore immaterial, does it not, whether you are making an amendment in a large Bill or a small Bill; it is not as if you were proposing to re-enact the whole Bill with an amendment, but you pass a new amending Bill, in which you amend one particular section of the large Act?—I am speaking from the draughtsman's point of view, which is quite distinct from the political point of view. What you say is perfectly true, that you pass a very small Bill to amend. But take the case of the earliest Bill in which I was employed, and the longest, viz., the Merchant Shipping Bill. The Merchant Shipping Bill was a complete consolidation of the Merchant Shipping law. That has been necessarily varied since 1854 by, I suppose, some 19 or 20 small Bills. The Government have never been able to carry through a fresh Consolidation Bill, on the ground that it really comprises such a mass of matter that it falls of its own weight. Practically, therefore, whoever consults the Merchant Shipping law now has to wade through a great mass of materials. I do not say that the same thing would happen in the case of this Bill; but supposing that the Merchant Shipping Bill had been split up into a number of small Bills, it would have been easier when any section of that law had been altered to have reprinted the original Bill and to have re-passed it.

541. What you mean, then, is this: that any amending Bill of any parts of these Bills would have to be looked at as amendments to the whole; whereas if they were split up, these amending Bills would be appropriated to each Bill?—Yes, and you would have to pass a small Bill when you re-consolidated instead of re-passing a long Bill.

*Admiral Egerton.*

542. In the case of the Mutiny Act, now, it is passed every year completely; would this facilitate Parliament's passing a short Act of one single clause reconstituting this Act, as it were, each year; or would this Act go on, as the Naval Discipline Act does now, for good and all?—It would make no difference in the annual Bill, because, of course, it is equally easy to attract three little Acts as one great Act. It has been decided that the proper way is to put these clauses into a permanent form, and to attract them where they are to be attracted annually. Therefore, whether you attract one Act, or two Acts, or three Acts, is merely a question of adding two or three words to a Bill.

543: One

*Mr. Merewether.*

543. One single Act would bring into operation the three Acts so specified?—Quite so.

*Mr. John Holms.*

544. Would it give you much trouble to draw a copy of what the annual Bill might be?—I have a copy of the annual Bill here.

*Sir Alexander Gordon.*

545. With regard to taking out of the Mutiny Act that part of it which relates to billeting, and making a subsequent Act of it, am I not right in supposing that one main object of the present Mutiny Act has been ever since 1689 to provide for the payment of the army for quarters; that is to say, to enable the Sovereign to billet troops, which otherwise would have been contrary to law; for instance, the whole system of billeting in Scotland was some time ago entirely altered by the introduction or omission of some very small word, and has it not been to put that power on a safe footing for the inhabitants of the country that the Mutiny Act has been passed every year?—But I do not propose to alter the Parliamentary control in any way.

546. But you propose to take billeting out of the Mutiny Act?—It is simply reprinting it in another form; I am talking of the merest draughtsman's question.

547. I ask you now, as a constitutional lawyer, not a question of draughting, but as a question affecting the important law of the country, which authorises the Sovereign to billet; at present it is contrary to law to billet, but for the annual Mutiny Act, is it not?—Certainly.

*Chairman.*

548. I understand that the billeting clauses are always meant to be kept under the operation of the annual Act, whether we embody them in one Bill or in two Bills; and the only sections which you have suggested should not be under the annual Act are the Enlistment clauses, which are not now under the operation of the annual Act?—Quite so. I may explain that I do not propose any difference in principle. I will assume, for the purpose of my answer to the question, that Army Discipline is in one Bill and that Billeting is in another Bill. Then the annual Bill will say that the Army Discipline Bill and the Billeting Bill shall come into operation so and so. If you want to alter them you must, of course, put in a clause amending either the Army Discipline Bill or the Billeting Bill, and it must come before Parliament specifically. The difficulty now is this: that that great mass of confused matter called the Mutiny Act, is passed through Parliament in such a chaotic state that no human intelligence can understand the alterations; but whichever plan the Committee are pleased to adopt, if any part of the Government scheme is carried, the result will be that there can be no alteration henceforth brought before Parliament without the attention of Parliament being specifically directed to it.

549. The objection that the honourable and gallant Member has taken is that sufficient attention is not drawn at present to alterations in the Mutiny Bill, the Mutiny Bill being a new Bill every Session, and, therefore, that Members do not see, unless they very carefully scan it, that

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*Chairman—continued.*

the Mutiny Bill has been changed; but if the plan which you propose is adopted hereafter, every change must appear, must it not, in the form of a notice of amendment, it not being a new Bill, but in point of fact, an old Bill?—Practically, as you say, it will appear in a clause in a very short Bill, and Parliament cannot help having its attention directed to it.

550. Now it does not appear in a clause, because the Mutiny Bill is originally a new Bill every Session; and therefore this scheme, whether you have one Bill or three Bills, will constantly call the attention of Parliament to the fact that an alteration has been made and the necessity created of having a new clause?—Quite so.

551. First of all, as to Clause 4, is that substantially the existing law, or is there anything in that clause which may be regarded as an alteration, either by addition or diminution of the existing law?—The material alteration in Clause 4 is the introduction of the words "On Active Service." I do not myself think, though I call it material, that it really alters the substance of the clause. As I understand, the offences specified in Clause 4 must, from their very nature, be perpetrated on what I should call active service; but the words have been put in throughout these clauses in order to make it quite clear that it is intended to apply only on those occasions.

552. What is the meaning of the introduction of the words "on active service" throughout your Bill?—I have put in the words "on active service" wherever I have thought that the offences obviously ought not to be punishable with so severe a punishment, unless they were committed on what I call "active service."

553. Then your view is that there are certain offences which should be punishable with a heavy penalty if the soldier is engaged on "active service," than such offences would merit if the soldier was not so engaged?—Certainly.

554. The expression, "on active service," I think, does not find a place in the existing military law, does it?—No.

555. Have you employed the term "on active service" in order to embrace conditions of things which would not be covered by the term "war"?—Certainly, and also to avoid an ambiguity. Supposing that we were at war with any nation in the world, it is a time of war; but it may be that the army in England has nothing on earth to do with the war.

556. Therefore, in some senses, the word "war" is too wide, and in other senses it is too restricted?—Quite so.

557. There would be some conditions of things, as, for instance, operations against a hostile tribe, or in operations in civil commotion, or operations against pirates in the Eastern waters, and so on, which would hardly be properly described as "war"?—Certainly. There might be occupation of a hostile country where there might happen to be no war at all.

558. That would hardly be called "in the field," would it?—I define it to be "active service."

559. Your object in using the term "active service" is to embrace conditions of things which would not be covered either by the term "war," or by the term "in the field"?—Certainly.

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*Chairman—continued.*

560. As regards Clause 4, as I understand you, there can be no ambiguity about it, because these are offences which almost necessarily apply to hostile operations?—Yes, from their very nature; the only one which is not quite covered is “intentionally occasioning false alarms”; I suppose that might be done when not on active service.

561. Of course the Mutiny Act contains a definition of the persons who are subject to military law, and your Bill will have to contain that also?—Certainly.

562. I observe that the clauses in the first part of the Bill are all applicable to persons subject to military law; will you explain to the Committee what that phrase means, whom it will embrace, and whether or not it subjects any persons to severer penalties than the existing Mutiny Act does?—First of all, I will say that with respect to the question that an honourable Member asked me about the sutlers the other day, I still think that the clause was susceptible of the interpretation put upon it; but after the explanation given by Mr. Clode, that it was introduced solely with reference to the Indian forces, we must consider that sutlers and followers are not under the Mutiny Act except in India. On the other hand, I inquired at the War Office what was practically done, and the reply was this: whenever an army is in the field, the provost marshal has the power to punish under the Provost Marshal Clause any followers whatever of the army, including anybody, assuming that he catches them; and the way in which they actually keep up the discipline is through the Provost Marshal Clause; therefore when I admitted that I was wrong in making sutlers and followers subject to the Mutiny Act, that is true, in one sense, but not in another; they are subject by express legislation to the power of the provost marshal.

563. Without going into further discussion about sutlers, will you first explain what is the meaning of the phrase “persons subject to military law,” and will you also tell us whether your Bill subjects any persons to severer penalties than they are now liable to under existing legislation?—I propose, when I have corrected the clause according to the information that I have received, that this Bill should have exactly the same scope as the Mutiny Act, neither more nor less.

564. And the persons subject to military law, as defined in this Act, will be the persons subject to military law under the Mutiny Act, and no others?—Quite so.

565. And you will not make the class of offences which those persons may commit any larger than it is now?—Certainly not, as I am instructed.

*Sir Henry Havelock.*

566. Then the practical effect of that will be that on page 37 of your draft Army Discipline Bill, sub-section No. 5, would have to be modified, would it not?—Yes, it would have to be confined to India.

567. Then there is a residue of followers, who are included there, who would be attached to any of our armies in the field not in India; how

*Sir Henry Havelock—continued.*

would you propose to deal with them?—Under the Provost Marshal Clause.

*Chairman.*

568. Take, for instance, Clause 5, sub-section 2: “Plunders or does violence to any friendly inhabitants of the country in which he is serving”; surely that ought to apply to sutlers, and to anybody else attending the army, as much as to any soldier?—I thought so, but I asked the question of Colonel Greaves, and the reply which Colonel Greaves made to me was, “We invariably punish them under the Provost Marshal Clause, and we require no further power”; and he authorised me to state so to the Committee. The Provost Marshal Clause is No. 80; it is an exact copy of the Article of War. The important words are found on page 34, line 5: “To preserve good order and discipline, to prevent breaches of both by soldiers and followers of the army, and to punish on the spot, or the same day, those whom they may find in the immediate act of committing breaches of good order and military discipline.” On those words Colonel Greaves informs me that they invariably keep order amongst the followers. They could not conveniently try sutlers, or followers, by court-martial, and, therefore, they invariably trust to the powers of the provost marshal, which he authorised me to state are sufficient.

*Mr. Campbell-Bannerman.*

569. Is that provision not governed by the first words of the clause, which are a sort of preamble: “For the prompt and instant repression of all irregularities and crimes abroad which may be committed by persons subject to military law”?—Yes, that is possible; but I have stated the practice under the Provost Martial Clause as it was stated to me.

*Sir Henry Havelock.*

570. If you follow the latter portion of Clause 80 of the draft Bill, you will see that there is a class of cases which are not provided for by the action of the provost marshal; that is to say, with regard to soldiers and officers who are undoubtedly under the operation of the Mutiny Act and Articles of War, the provost marshal is entitled to act, if he detects them in the commission of certain acts; but in the latter part of that clause, from line 15 to line 20, there is a provision that in the case in which they should not be detected by the provost marshal in the actual commission of the crime, they may be dealt with under the summary authority of the general commanding in the field; sutlers being excluded from the class of “persons subject to military law,” in Sub-section 5, I should like to know whether it is proposed that, in cases where they are not detected in the immediate commission of the crime by the provost marshal, they should be dealt with summarily by the general commanding in the field, which would be an entirely new mode of dealing with them, both in the practice of our own army and in that of foreign armies, or whether they are to be dealt with by court-martial?—I think that there is a great deal in what Mr. Campbell-Bannerman says with respect to the construction of this clause. According to my own judgment, sutlers and followers in the field ought to be expressly put

*Sir Henry Havelock*—continued.

put under military law by Statute; and I have put them under a military law. It was proved to me historically (and I use the term "historically" deliberately, because I think the construction is the other way) that sutlers and followers were put in when the Indian army was made a part of the Queen's army, and that the expression only applied to the forces in India. Thereupon I was ordered, as I understood, by the Committee to strike them out. I then inquired at the War Office what they wanted, and the answer made by Colonel Greaves was what I tell you.

*Chairman.*

571. What possible objection can there be to placing persons who voluntarily accompany an army in the field under military law, because it is at their option whether they accompany the army or not, and they can withdraw themselves whenever they like?—On the contrary, I think they ought to be under military law.

*General Shute.*

572. There are men pressed for transport who are not voluntary followers of the camp, but they are under military law or ought to be?—They are not, I think.

*Chairman.*

573. Of course a great many of these offences are offences which can only apply to enlisted soldiers; but on the other hand there is a certain set of offences, such as plundering friendly inhabitants, breaking into a house in search of plunder, treacherously holding correspondence, or giving advice or intelligence to the enemy, treacherously making known the watchword (which might possibly be known to another person beside the soldier), relieving the enemy with any supplies, by word of mouth or in writing spreading reports calculated to create unnecessary alarm or despondency, either verbally or in writing disclosing the numbers, position, magazines, or preparations, or orders relating to operations, or movements of the army, or wilfully destroying or damaging any property; all of which things may equally be done by persons accompanying the army as by soldiers, and which may be equally injurious to the army?—I should have thought so, certainly. I was surprised at the answer given to me that they did not wish for the power.

574. We are not here upon the question of what power is wished for, but of what power it is proper to give; does there appear to you to be any reason for excepting from the punishment for offences of that character persons who are not regularly enlisted any more than in the case of the veterinary surgeons, medical storekeepers, apothecaries, hospital stewards, and others who may not be in the regular service of the Crown?—On the contrary, if I were exercising my own personal judgment, I should certainly put such persons under military law; but I should have them tried by general court martial. I do not think they ought to be tried as belonging to a regiment.

575. I suppose, in one point of view, all persons with the army may be regarded as having temporarily voluntarily enlisted?—I should have thought in theory there was no reason whatever  
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*Chairman*—continued.

for excepting them, but, on the contrary, the strongest possible reason for including them.

576. I suppose that the words of your Section 84, Sub-section 5, "All persons who in time of war are followers of or accompany Her Majesty's army, or any portion thereof, when in the field," would include newspaper correspondents?—No doubt.

577. Your phrase in reference to all these clauses is "every person subject to military law;" and as your Bill stands at present, you propose to apply that phrase to everybody who accompanies the army, according to your definition, in the subsequent clause?—That is so.

578. As your Bill stands at present, all these clauses are made to apply to all the persons included in your definition clause at page 37?—Certainly, both in peace and war.

579. As I understand that, classification is the existing classification, subject to a doubt which has been expressed on the subject of sutlers and followers?—That is so. I understood the Mutiny Act to put sutlers and followers of any of Her Majesty's forces, whether in India or not, under the Mutiny Act. I still think that if you read the clause as a lawyer it is quite susceptible of that interpretation. At the time when the Army Manœuvres Acts were passed, the War Office, as I understand, considered that that was the interpretation, and we acted upon it; but the other day, when the subject arose before the Committee, Mr. Clode was examined as a witness, and he told us (and we afterwards found it proved by the fact) that that particular paragraph at page 21, "and all the provisions of this Act shall apply to all persons belonging to Her Majesty's Indian forces," and so forth, down to the word "forces," before the last proviso, was introduced by him at the time when the Company's forces were transferred to the Queen; and that every word in that clause, including veterinary surgeons, medical storekeepers, apothecaries, and so forth, and especially including licensed sutlers and all followers in any of the said forces, applied to and was governed by the words "Indian forces;" or, in other words, that "sutlers and followers" meant sutlers and followers in or of any of the said Indian forces. Thereupon I told Sir Alexander Gordon that if that were so I must admit that I was historically wrong.

580. As your Bill stands, you propose to apply to the whole army the same provisions that are supposed to be applied to the Indian army in the 2nd section of the Mutiny Act?—Certainly.

*Mr. Merewether.*

581. For that purpose you change the word "troops," in Section 164 of your Bill, to the words, "persons subject to military law"?—That is so; that is the only alteration I have made to carry out my view.

*General Shute.*

582. You use the word "followers," I think, do you not?—Yes.

583. It is difficult of definition, is it not?—Yes, I admit that, but I have used the old term.

*Chairman.*

584. Do I correctly understand that all the persons who are enumerated in Clause 84 of the Bill  
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Bill are now clearly subject to military law, with the exception of the doubt which has been raised as to the class of persons under Sub-section 5?—Certainly.

*The Judge Advocate General.*

585. And also with the exception of those in Sub-section 2, because they are only liable when they are in India, are they?—There are no means of ascertaining what is the exact meaning of Sub-section 2. Sub-section 2 does, I believe, apply to the Indian forces, but it is not at all clear, because storekeepers are also mentioned in another part of the clause. The clause can only be settled by appealing to the proper authorities.

*Chairman.*

586. Unless you can vouch to us, in answer to a general question, that all these persons mentioned in Clause 84 (with the exception of those specified in Sub-section 5) are now subject to the Mutiny Act, I am afraid we must examine them in detail; in Clause 84 are there any persons enumerated who are not subject to the Mutiny Act either in the army generally or in the Indian forces?—No; Clause 84 is intended to be a copy of the Mutiny Act; I have made general certain clauses which I am told, and which you think apply only to India; if the Committee would be good enough to pass a resolution that they wish the army and the militia, and so forth, to be included in the operation of the Act, then it will become my duty to specify what the army is; the difficulty that I have had is that, not being a military man, I have not been able to decide why a great many of these words which I know to be useless are introduced; but if the Committee would be kind enough to say that they wish to include in Her Majesty's army Her Majesty's officers and soldiers in India other than the native soldiers, then, (on principle, I would undertake to make the clauses right; I will take care that these storekeepers and people are, or are not, included, by reference to the War Office.

587. Passing on to Clause 5, is there anything new in that clause, or is it practically the existing clause?—Sub-section 2 of Clause 5 is more severe than the existing law, which provides only for doing violence "to any person bringing provisions or any necessities to the quarters of our forces," and I have altered it into "or does violence to any friendly inhabitants of the country in which he is serving"; these clauses were settled a very long time ago; we thought that "bringing provisions or other necessities" was too narrow, and that it ought to extend to "any friendly inhabitants of the country," on the ground, which I think the Committee will see, that there is no reason why the doing of violence should be confined to people who bring provisions or other necessities.

*Mr. Herschell.*

588. Why is this put in a separate section; why should they not be all sub-sections of a general section, the punishment being the same and the persons to whom it is applicable being the same?—It is really a matter of taste; I thought it was easier to understand when they were split up than when you have a number of sub-sections.

*Chairman.*

589. It is in order that non-legal persons may distinguish between the different classes of offences, is it not?—Certainly.

590. There is rather an objection that in some of the clauses of the Mutiny Act, a number of offences are piled up in one clause?—Yea. Of course this is entirely a matter of taste, but I should submit to the Committee that it is very much better to sub-divide them. Extreme pains have been taken to sub-divide them on a certain principle.

591. Clause 6 has to do with treacherous correspondence with the enemy; are there any alterations there in the existing law?—I believe that there are no material alterations in Clause 6.

592. These first clauses down to the end of Clause 6 are as to offences to be subject to the punishment of death, are they not?—Yes, because they are so subject to the Mutiny Act.

593. These are all offences which can only take place upon what you have called active service; from the character of the offences they are not offences which could take place in time of peace?—So I understand it.

594. Would Clause 7 also apply to active service?—No, because the words are, who treacherously and without due authority relieves the enemy, and in any way knowingly assists the enemy. I consider that the word was not wanted.

*Mr. Staveley Hill.*

595. In Clause 6, the words "when on active service" are omitted; and in Sub-section 3 you have not got the word "enemy," but you have "any person"?—That is true. There can be no objection to putting in the words "on active service," if the Committee wish it.

*Chairman.*

596. Clause 7 again is a clause which would only apply, I suppose, to what you call active service?—So it seemed to me. The punishment is imprisonment on this ground: that these offences are entirely found in the Articles of War, and not in the Mutiny Act; and according to the existing Articles of War, neither death nor penal servitude can be awarded in respect of any offence created by the Articles of War.

597. Then the ground upon which you have only applied imprisonment to these offences is that that is the existing law?—Quite so.

*Sir Alexander Gordon.*

598. There appears to be no provision for an offence committed by an officer; you do not imprison an officer generally; you cashier an officer?—If you would be good enough to look at the scales of punishment, you will find that that is provided for.

*Chairman.*

599. It looks to me as if Sub-section 5 in Clause 7 was very much like Sub-section 2 in Clause 6; for one offence a man may be executed, and for the other he may only be imprisoned; is not Sub-section 5 of Clause 7 really included in Sub-section 2 of Clause 6?—The difficulty no doubt is extreme. What I have really done is this: I struck out some of those offences which were obviously the same, and I have retained the existing law; but I can see no reason whatever

*Chairman*—continued.

whatever why, for instance, we should not strike out Sub-section 5 of Clause 7; it is simply retained because I did not consider myself justified in altering the existing law without any authority.

*Mr. Staveley Hill.*

600. May I direct your attention to the fact that Sub-section 5 of Clause 7 is not a copy of the Article of War, and of course the thing that raises the difficulty is that your draughtsman has put in these words, "Holds any correspondence with the enemy," which are not in the original Article?—The 59th Article of War is: "Any officer or soldier who shall send any flag of truce to the enemy without due authority." That is put in, because treacherously holding correspondence with the enemy is punishable with death, and the other is holding correspondence without due authority. We struck out "giving advice," because we thought it was absurd. We made a difference between treacherously holding correspondence with the enemy in Sub-section 1 of Clause 6, and holding correspondence with the enemy without due authority in Sub-section 5 of Clause 7, because we thought it ought to be punished, but not with the same severity as when it is done treacherously.

*Chairman.*

601. It is possible that an officer in command might take upon himself to enter into negotiations with the enemy, not treacherously, but thinking that he was doing good service in doing so?—Yes; in fact that might frequently happen.

*Mr. Staveley Hill.*

602. Is the word "treacherously" intended to apply to Sub-sections 2, 4, and 5 of Clause 6?—Certainly not; the words are "treacherously holds correspondence with or gives advice or intelligence to the enemy." We punish that with death. We punish a man who corresponds, not treacherously, but who simply writes to a man which he ought not to have done, with imprisonment. Then we considered that a man could not treat or enter into terms with the enemy except treacherously, and therefore we considered that the words "without due authority," ought to be the expression there.

*The Judge Advocate General.*

603. You have advisedly kept the old language, have you not?—Yes.

*Chairman.*

604. Is Clause 8 the existing law?—Yes.

*The Judge Advocate General.*

605. The punishment according to the existing law is heavier, is it not?—No; because in the Articles of War it says that he is to suffer death; but then at the end, at Article 189, they say that nobody is to suffer death or penal servitude by these Articles. Therefore when an offence is simply under an Article of War nothing but imprisonment can be inflicted.

606. Does Clause 9 vary in any way from the existing law?—No, I think that is *verbatim* the same.

607. With reference to these clauses which we are now considering: what you have done here 0.111.

*The Judge Advocate General*—continued.

is that instead of leaving these punishments general, as they are under the 69th Article of War, that is to say, such punishments as shall accord with the provisions of the Mutiny Act and with the engagement of the service, you have given a definite punishment?—Certainly, but it is in fact the same; because, you see, it runs, "and shall on conviction be liable to be cashiered, or suffer such other punishment according to the nature and degree of the offence, as by the judgment of a general court-martial may be awarded." Then when you come to examine the Articles of War you will find that Article 189 states that "no person subject to the Mutiny Act shall be sentenced to suffer any punishment extending to life or limb, or to be kept in penal servitude by virtue of these Our Articles of War, except for such crimes as are expressly declared by the Mutiny Act to be so punishable." Therefore, whenever you find a crime specified in the Articles of War only, imprisonment is the highest punishment that you can award.

608. Therefore, in point of fact, the punishments that you have given here have the same limit as they have in the Articles of War?—Precisely.

*Mr. Herschell.*

609. Have you done that simply because you found them so at present, without considering what would be the expedient punishment?—I always considered that, at all events the existing maximum punishment was quite enough.

610. Take, for example, wilfully destroying or damaging property, unless such destruction or damage be ordered by a superior officer; of course it may not be quite so bad as plundering friendly inhabitants, which you punish with death, but it is a very serious offence as regards the mischief that it does, and it seems rather a disparity to give merely imprisonment for that and death for the other?—I am not a soldier, but I think it is an extremely different class of offence. As we all know, plundering is the vice of the soldier; he gets excited, and he robs without license; but simply damaging property is very often a necessary act, as, for instance, in marching through gardens.

611. But to make it an offence at all it must be done without due authority?—A man may knock down a gate or commit other damage wilfully. It is surely quite a different offence from plundering.

*Chairman.*

612. It is the same difference that is made between the malicious damaging of property and plundering?—Yes.

*General Shute.*

613. It seems to me that Clause 9 might very well be included in Clause 7; "either verbally, or in writing, disclosing the numbers, position, magazines, or preparations, or orders, relating to operations or movements of the army," is very much the same thing as "holding correspondence with the enemy"?—No; the distinction is very important. Men write home, and officers write home, and those writings are published; and it is intended to deter men from doing that specific thing. Holding correspondence with a person means that you are in correspondence with him relating to

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to some neutral subject. A man may disclose the number or position of the forces to the enemy whilst writing a letter to a friend.

Chairman.

614. Besides which, this may not be a disclosure to an enemy?—No, not at all; it is directed, I believe, against officers writing imprudent letters, which get published in the newspapers.

615. But it might be a separate sub-section of Clause 7, might it not?—If you wish to have it put there, it might.

The Judge Advocate General.

616. It is not "on active service"?—No, I do not think it is intended to be confined to active service. We all know the danger that might arise if an officer in England, not on active service, wrote an imprudent letter disclosing what he knew of the operations of the army.

Chairman.

617. From its present wording, it might apply to newspaper correspondents giving an account of the operations at Aldershot of the Autumn Manœuvres, might it not?—It is only intended to apply to persons subject to military law.

618. Is Section 10 the same as the existing law?—Yes; I thought that if he was not on active service, the man was simply under the usual law as to malicious injuries to property, and he would be tried in the ordinary way.

Mr. Herschell.

619. You say that he shall suffer any punishment not exceeding imprisonment; is there any limit in this Act to the term of imprisonment?—It is limited to two years.

620. So that, in fact, penal servitude is only a minor punishment for offences which may be followed by death?—It is.

Sir Alexander Gordon.

621. Where is it provided for when it is committed not on active service?—Of course, as a military offence, it would be contrary to discipline. As a civil offence, it would be provided for by the law of every country. The man would be tried militarily under what you call the Devil's Article.

Chairman.

622. As an ordinary rule, I presume that a soldier would be tried by civil law, and not by military law; for instance, if he went and committed "waste or spoil" in "fish-ponds, houses, or gardens," he would not be tried by court martial?—No, he ought not to be.

623. Clause 11 also, I presume, is the present law?—That is the Article of War.

The Judge Advocate General.

624. Having got to the end of that heading, is it your opinion that these crimes and offences are arranged in the most convenient manner that you can devise?—Certainly.

625. Do you think that they are susceptible of any material improvement?—I have arranged them to the very best of my judgment.

Chairman.

626. Is Clause 12, as to the punishment of a

Chairman—continued.

sentinel, the same as the existing law?—Clause 12 is materially altered by the introduction of the words "is drunk"; that is not, I think, in the Articles of War, or in the Mutiny Act. As I stated before, the officers wished those words to be introduced.

627. I see that you have made the crime punishable by death, if it is committed on active service, and by imprisonment, if not on active service; is that a distinction which already exists?—Apart from the exception of being drunk, it is in effect the same as Clause 15 of the Mutiny Act, which provides that "If any person subject to this Act shall, at any time during the continuance of this Act, leave his post before being regularly relieved, or shall sleep on his post, all and every person and persons so offending in any of the matters before mentioned, whether such offence be committed within this realm, or in any other of Her Majesty's dominions, or in foreign parts, upon land or upon the sea, shall suffer death, or penal servitude, or such other punishment as shall by a court-martial be awarded." Then I have mitigated it by attaching death, or penal servitude, only to the offence when committed on active service, and I have added to the clause, by introducing the words "is drunk."

628. In the Mutiny Act it applies to persons not on active service, does it not?—Literally, certainly.

Sir Alexander Gordon.

629. But the present Mutiny Act does not contain the word "drunkenness"?—No, I have mitigated the clause in one sense, and made it more stringent in another; a sentinel sleeping on his post is never really shot except on active service.

Mr. Herschell.

630. Why does it say "shall suffer death or any other punishment"; what does that refer to?—It means the inferior punishment as classified in the scale of punishments.

631. You mean the punishments referred to in Clause 46?—Yes.

Chairman.

632. Would not the words "such lesser punishment" be clearer?—They would.

Sir Henry Havelock.

633. Is there any clause in your Bill limiting imprisonment to imprisonment for two years?—There is.

Chairman.

634. In Clause 13 is there any change in the existing law?—I think that Clause 13 represents the existing law precisely; there is this difference: I have made it extend to mutiny or sedition generally; the old law only relates to mutiny or sedition in Her Majesty's land or marine forces; I thought it better to put it in that way; I submit to the Committee, with great confidence, that it ought to be "every person subject to military law"; I cannot imagine anything more dangerous than sutlers and followers of the army exciting sedition.

635. Clause

Mr. Herschell.

635. Clause 13 does not only apply to active service?—No; there is a very severe penalty, I think, for inducing men to desert.

Sir Alexander Gordon.

636. 37 Geo. 3, c. 70 applies to civilians inducing to mutiny, does it not?—Yes.

Chairman.

637. Have you anything to say as to Clause 14?—The latter part of Article of War, No. 37, relating to the punishment for striking an officer in a military prison is omitted as the existing law is adequate to meet the offence; oddly enough both in the Mutiny Act, and in the Articles of War, striking an officer in a military prison is punishable with death; there appears to be no reason whatever for it; the prison regulations are extremely stringent; the words of the 37th Article of War are: "Any officer or soldier who, being confined in a military prison, shall strike or offer to use any violence against a visitor, or other his superior military officer, being in the execution of his office"; it was considered quite unnecessary to make that offence punishable by death, inasmuch as military prisons, like all other prisons, have most stringent laws, and if the prisoners strike the officers they get flogged.

638. Then I take it that Clause 14, as you have drawn it, confines the punishment of death to striking a superior officer in the execution of his office, and omits the provision which is contained in the Mutiny Act and in the 37th Article of War as to similar offences in military prisons, the latter being a matter of prison discipline rather than of military discipline?—Certainly.

639. Does Clause 15 follow the present law?—In Clause 15 I have differentiated between active service and not on active service. I have struck out the punishment of death for disobeying the lawful command of a superior officer when not on active service.

640. I suppose that that is nothing else but what is ordinarily called insubordination?—Nothing else.

641. And for insubordination I suppose that nobody is ever condemned to death in time of peace?—Never.

642. I see that your maximum penalty is penal servitude?—Yes, it is quite severe enough; 5 years is the minimum. I should myself like to alter it.

643. Is there no distinction to be made between the command of an officer given on active service and the command of an officer not given on active service?—Not that I am aware of. In the one case it is striking or offering violence to a superior officer in the execution of his office; in the other case it is disobeying any lawful command of a superior officer not in execution of his office.

644. Supposing that an officer was to give an order to a messman to do something not relating immediately to military service, would he be equally liable to such a penalty as this on disobedience?—Technically I believe that if my superior officer told me to walk across the room on tip-toe, and I did not walk across it on tip-toe I should be subject to the punishment of death.

Mr. Herschell.

645. I suppose that the command of an officer 0.111.

Mr. Herschell—continued.

to his soldier servant would come under it?—I should think so.

Chairman.

646. In your opinion is it not practical in some way or other to define the commands as being commands relating to military service?—I will endeavour to do it if I am ordered so to do by the Committee. This clause has always stood in this way: I am not aware that any attempt has been made to deal with it by differentiating it, and I really have never myself understood how it is worked. The offence is sometimes punished by the commanding officer; sometimes the man is sent before a regimental court-martial; sometimes before a district court-martial, and sometimes before a general court-martial, as I understand it. I do not know how it is differentiated.

647. I see that in the 37th Article of War the striking of a superior officer, or using violence towards him, which is a far greater offence, of course, is limited by the words "being in the execution of his office"; so that a soldier striking a superior officer not in the execution of his office would not be liable to death?—That is true, apparently, but it is not true in fact. It is held that an officer is almost always in the execution of his office. He is not in the execution of his office when he is out shooting in plain clothes, or when he is at a ball; but supposing that as he is going home along Pall Mall in plain clothes he finds one of his soldiers quarrelling with another soldier, and he interferes, and the soldier strikes him, he then, although in plain clothes, and though unknown to the soldier, is, as I understand it, in the execution of his office.

648. Let us follow out the illustration which you have given, of his not being in the execution of his office when he is out shooting, that would be, at all events, in restriction of Article 37; but supposing that when he was out shooting he gave an order to another person, his subordinate, who was out with him, there is no restriction of the 37th Article?—It is quite true.

649. Therefore for disobeying a lawful order, a soldier is more extensively liable to the punishment of death than he is under the greater offence of a subordinate striking his superior officer?—That is so; so far as I can judge.

650. In the one case, the punishment for the more malignant offence is limited in its operation, and in the case of the comparatively smaller offence it is unlimited?—That is so. I do not believe that the command of an officer is the less lawful, because he is out of uniform; assuming that it is part of his business to give the command.

Sir Henry Wilmot.

651-2. But he is not the punisher; he can only send him before a regimental court-martial?—He can apply for a district court-martial. He practically elects the court-martial which he shall go before. And according as the man goes before the higher or the lower court-martial, in the proportion practically as a general rule he gets the higher or the lesser punishment.

653. But the offence is very carefully weighed beforehand?—No doubt.

General Shute.

654. The real fact is that practically the difficulty

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culty with the commanding officer is that he too often wishes to try a man for a serious offence by the lower instead of the higher court?—My personal opinion is that they err very often on the side of leniency, but they also err on the side of severity.

*Chairman*.

655. The great difficulty appears to be the

*Chairman*—continued.

laxity of the words, "any lawful command;" might we revert to the words "military command?"—There might be a question of what a military command would be. In an ordinary sense a military command would be a command given by an officer in furtherance of his duty as an officer; but it would be a difficult question to decide.

Friday, 21st June 1878.

MEMBERS PRESENT:

Mr. Campbell-Bannerman.  
Lord Elcho.  
Admiral Egerton.  
Sir Alexander Gordon.  
Sir William Vernon Harcourt.  
Sir Henry Havelock.  
Mr. Herschell.  
Mr. Staveley Hill.

Mr. John Holms.  
The Judge Advocate General.  
Colonel Loyd Lindsay.  
Mr. Merewether.  
Major O'Beirne.  
Mr. Parnell.  
General Shute.  
Sir Henry Wilmot.

SIR WILLIAM GEORGE GRANVILLE VERNON HARCOURT, Q.C.,  
IN THE CHAIR.

Sir HENRY THRING, K.C.B., re-called and further Examined.

*The Judge Advocate General.*

656. IN answer to Question No. 651, addressed to you at last meeting of the Committee, you stated it to be your opinion that the words "Military Order," in the 15th Clause, "ought to be differentiated." You say "the commanding officer is really always absolute master of the punishment in this way, that there is nobody entitled to prosecute a soldier, except the commanding officer; he is first of all brought before his commanding officer, who may practically, in almost every case, punish the man himself, because he may consider it one of the minor acts of disobedience. If he thinks that the soldier deserves a higher punishment, he sends him before one of the three courts, and he is the mover." Have you prepared any amendments to this clause with a view to carrying into effect the opinion which you then expressed?—I understood the Chairman to wish me to try to differentiate the punishments with respect to the lawful command of a superior officer. I should propose to read the clause in this way: "Every person subject to military law, who disobeys any lawful command given by his superior officer in the execution of his office, shall, if he commit such offence on active service, be liable to suffer death, or such other punishment as in this Act mentioned, and if not on active service shall be liable as follows, that is to say, for a first offence, to suffer any punishment not exceeding imprisonment, and for any subsequent offence to suffer any punishment not exceeding penal servitude." I propose, first of all, to make the "lawful command" one in execution of his office, which, in effect, would be necessarily a military command; and I propose, when it is not done on active service, to make the punishment for the first offence imprisonment. The reason why I wish to differentiate the punishments in that way is this: that if you make it imprisonment for the first offence, it will bring the minor disobediences, which can hardly be called disobediences, within the jurisdiction of a regimental court martial, or

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*The Judge Advocate General—continued.*

of the commanding officer; whereas if penal servitude is the maximum, it must go to a district or general court martial; and I have been informed (though officers in the army who are on this Committee can judge better than myself) that it is very desirable to have what are called those minor acts of disobedience not treated as insubordination, or offences to be tried by the higher species of courts martial, but that it would be a very great advantage indeed that they should, in the discretion of the commanding officer, come within his own jurisdiction, or that of a regimental court martial.

*Chairman.*

657. Do I correctly understand you to say, then, that at present an offence of this character is such that it could only be tried by a district or general court martial?—That is so.

658. And what you propose is to graduate the punishments, so that in the case of first offences and minor offences, they may be dealt with summarily by the commanding officer, or by a regimental court martial?—That is so.

659. Then the two changes which you propose to make in Clause 15 are, first of all, to limit the words "lawful command" to "commands given in execution of his office by the superior officer;" and the second is, that when on active service the first offence shall be tried, like what we call minor offences, under summary jurisdiction?—They should only carry the minor maximum punishment of imprisonment, which will, in effect, make them possibly, but not necessarily, summary offences.

*Sir Henry Wilmot.*

660. Is the first offence to be absolutely punished by the commanding officer, or by a regimental court martial; or, in case of its being a very grave disobedience of orders, as it might be, will the commanding officer have power to refer it to a general or district court martial?—

Supposing

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Supposing that my proposition were adopted with respect to an offence on active service, it remains as it is. With respect to an offence which is punishable only by imprisonment, the commanding officer might either refer it to a general, district, or regimental court martial, or he might try it himself, according to the gravity of the offence; but there could not be inflicted more than a maximum punishment, which is a very severe one, of two years' imprisonment.

661. Of course that could not be inflicted by a regimental court martial, but you would leave it to the power of the commanding officer to refer it to a district or general court martial, as he might think best?—Certainly. When we come afterwards to the frame of the Bill I will fully explain how it would work out in that way.

Chairman.

662. It would, perhaps, prevent the commanding officer from referring this first offence to a court martial?—Not in the least; it only limits the punishment that a court martial can give; it could not give death or penal servitude.

General Shute.

663. With regard to a general court martial, is not a limit of that nature somewhat questionable in the case of so high a tribunal?—I presume that a commanding officer would never send an offence to be tried by a general court martial which he only intended to be punished with the comparatively limited punishment of imprisonment; but I was asked the question technically; technically, he could, but practically, I presume, he would never do it.

Admiral Egerton.

664. Do you, from your own experience, see any special advantage in the army system, of having more than one sort of court martial, over the naval system, of having only one description of court martial?—If, on such a point, my opinion is of any value, my personal opinion is that the Bill could be greatly simplified by only having one species of court martial; but it is entirely a question for the officers of the army, and not for myself. From a draughtsman's point of view, no doubt the matter would be simplified by having only one species of court martial.

Sir Alexander Gordon.

665. What are the grounds upon which you propose to have a special punishment for the first offence, which is, so far as I know, an entirely new proposition with regard to the mutiny law?—It is introduced under the Fraudulent Enlistment clauses for the crime of fraudulent enlistment; I am bound to say that it is a new principle.

666. The Enlistment Act we view as a civil Act, as it were, but this is a new thing as regards discipline?—Yes.

Chairman.

667. Supposing that we were to look for the mitigation of punishments for first offences rather to regulations or orders proceeding from the military authorities than to Act of Parliament, could there not be a regulation made by the Commander in Chief, directing that first offences, for instance, should be dealt with in a more lenient

Chairman—continued.

way than subsequent offences, even supposing that the clause stood as you originally had it; or would the frame of this clause compel the thing necessarily to go to the higher tribunal?—Of course there might be a regulation made; but, unfortunately, the frame of the clause and the frame of the Bill are such that if we retain penal servitude as the maximum punishment, it would be impossible to leave an offence of that apparent magnitude to any tribunal of less consequence than a district or general court martial; because, as a matter of necessity, in regulating the offences subject to the different tribunals, we have declared that the greater offences shall be distinguished as capital or penal servitude offences.

668. But would it not be possible, by a separate clause, to give such operation to such regulations as I have indicated, that such regulations might, in point of fact, mitigate the character of the offence in case of first or minor offences, so as to bring them within the jurisdiction of the commanding officer or of the tribunal; might not the mitigation of penalties in the case of first and minor offences be effected by means of military regulations rather than incorporating them in the Statute; because, as you have observed, we want to do this, not only in this particular instance, but in a great many others, and if we attempt to do it in the Statute, it will become a very complicated thing?—I think your suggestion is a very good one. There would be no difficulty at all in saying in the Statute something of this sort: that wherever a regulation or Article of War reduces the maximum punishment of an offence under any particular circumstances, then that offence shall be subject to the lesser, instead of necessarily being subject to the superior, jurisdiction.

669. Do you not think that there would be convenience in giving to the military authorities power to make rules which the exigencies of the service might demand from time to time, rather than in attempting to differentiate offences in the statute?—I think it would be a very great improvement indeed.

670. Then we might dispense with attempting to distinguish between first offences here, and give vigour to these regulations by a clause in the Statute?—Certainly.

Colonel Loyd Lindsay.

671. I presume that the Commander in Chief, by Queen's Regulations or by circular, could confidentially communicate to the general officers, and might limit the power, and in fact he does now limit the amount of punishment to be inflicted?—Yes; nobody knows better than yourself that there is a Queen's Regulation at the present moment regarding six months' imprisonment, which is systematically disobeyed.

672. In point of fact, that is now done by the Commander in Chief?—It is now done by the Commander in Chief; but inasmuch as it is not legal, that is to say, inasmuch as it has simply a directory effect, it is disobeyed. What the Chairman asked me was, whether I could not give legal power to the directions by stating that where that direction was given, then the offence might be referred to the lesser tribunal.

673. The Queen's Regulations can apportion any less amount of punishment awarded in the Mutiny Act, but of course they cannot increase it;



Colonel *Loyd Lindsay*—continued.

it; but the Commander in Chief, by Queen's Regulations, can point out that any lesser amount of punishment is to be given according to the discretion of the court martial?—In this military law we are always getting into confusion as to what can practically be done, and what can technically be done. Practically, of course the Commander in Chief, or rather the Queen, can order by regulation an officer to do anything that she likes. She can order an officer not to give more than one month's imprisonment or three months' imprisonment; but that is not binding on him.

*Chairman.*

674. As I understand you, as the clause stands at present, no regulation mitigating punishment would enable the commanding officer, however small the offence might be, to dispose of that offence himself; but, as long as the penalty of penal servitude stands in the statute, he must send it to the higher court martial?—Certainly; exactly in the same way as under the present law, where it says that an offence is to be tried by a general or other court martial, no directions as to the punishment can take it out of the jurisdiction of that court martial; it must go to it.

Colonel *Loyd Lindsay*.

675. But that court martial might award a less punishment?—Certainly; the court martial may award anything within its jurisdiction.

676. The fact that you send a man to be tried by a general or district court martial, is no reason why a large amount of punishment should be awarded to him, is it?—No; but nobody knows better than yourself that the practical effect of sending a soldier before a higher court martial is, in nine cases out of ten, that the higher punishment is inflicted, though technically of course the higher court may inflict the lesser punishment.

677. If that is the habit, do you not think that it would be very well, in any recommendation which the Commander in Chief might make, that it should be pointed out that that is by no means

Colonel J. H. *ROCKE*, re-called; and further Examined.

*Chairman.*

680. CAN you give us any information upon this point?—The 38th Article of War is now as it has been for many years past. I cannot say exactly how many years, but certainly more than 15 years.

681. Is it according to your understanding of the law that when a penalty of penal servitude is assigned to an offence, that offence must be tried by a general court martial?—No court but a general court martial can award penal servitude. The general court martial may, of course, award other sentences besides penal servitude.

682. But when an offence is put into a category of which penal servitude is the maximum punishment, must that offence be sent for trial to a general court martial?—Not necessarily. (Sir *Henry Thring*.) The differentiation of the offences in the Mutiny Act and the Articles of War is by reference to the court martial by which the

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the intention of the law?—I should have said, on reading the Mutiny Acts in the way that an outsider does, that it was the intention of the law that as a general rule the higher tribunal should give the higher penalty; because the offences are differentiated in a great degree by the tribunal by which they are to be tried, which I think is a very objectionable mode of differentiating them. The difficulty under the Mutiny Act is this: that, supposing that a man disobeyed any lawful command of his superior officer, he must be tried by the court martial specified in the Act; he cannot be dealt with otherwise; and though it may be the most trivial thing in the world, supposing a non-commissioned officer told a man to black his boots, if he disobeys that command the Mutiny Act at the present moment absolutely declares that it shall be dealt with by a particular kind of court martial.

*Chairman.*

678. What I understand you to say is this: that if an offence has a maximum punishment of penal servitude, that offence must be tried by a general court martial, however trivial its character; is that so?—Certainly. What says the Mutiny Act at the 15th Section? "If any person subject to this Act shall disobey any lawful command of his superior officer, all and every person and persons offending in any of the matters before mentioned, whether such offence be committed within this realm or in any other of Her Majesty's dominions, or in foreign parts, upon land or upon the sea, shall suffer death, or penal servitude, or such other punishment as by a court martial shall be awarded." Regimental courts martial are forbidden to exercise jurisdiction upon such offences. Article of War 38 says, "Any officer or soldier who shall disobey the lawful command of a superior officer shall, if an officer, suffer death or such other punishment as by a general court martial shall be awarded."

Sir *Alexander Gordon*.

679. Do you know how long that has been so worded?—I do not know. I am bound by the law as it stands.

*Chairman*—continued.

offence is to be tried. The differentiation in the Bill which I have submitted to the Committee is by reference to the punishment.

Mr. *Staveley Hill*.

683. We are differentiating in the same way that it is done under the Navy Discipline Act?—That is so.

Sir *Alexander Gordon*.

684. (To Colonel *Rocke*.) With reference to the 38th Article of War, is it the fact that every man who disobeys the lawful commands of his superior officer must be tried, and is tried by a general court martial?—In practice it is quite the contrary. You will observe that the Articles of War specify a crime, and invariably name the court martial by which such crime is to be tried. If it is specified that the crime shall be tried by a general court

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court martial, it is undoubtedly the duty of the commanding officer to apply to his superior officer for that court martial. It then rests in the discretion of the general officer in practice to decide whether the offender may be tried by the lesser tribunal, the district court martial. That is the practice.

General Shute.

685. Is it not usual for the commanding officer to apply for permission to try a stated crime by a regimental court martial, or a district court martial, instead of applying for a general court martial?—Certainly.

Mr. CHARLES M. CLODE, re-called; and further Examined.

Mr. Clode.

Chairman.

686. SUPPOSING that the 15th Clause stood thus: "If not on active service shall be liable to suffer any punishment not exceeding penal servitude;" by whom, in your opinion, would the offence be properly triable?—Of course, that would involve an investigation of the Mutiny Act first, and of the Articles of War afterwards, for I did not come prepared to deal with this question; and I can only speak on general principles.

687. You could not say off-hand to what tribunal that clause, as it stands, would refer the offence?—I quite follow that each court has a power to give a particular gradation of punishment; and if you are content to take a lesser punishment, I think you would find that under the 140th Article of War you might send the offence to be tried by a lower court.

Mr. Staveley Hill.

688. Let me call your attention to the proviso in the 9th Section of the Mutiny Act, which is as follows: "Provided always, that no such district or garrison court martial shall have power to try a commissioned officer, or a warrant officer, holding an honorary commission, or to pass any sentence of death or penal servitude;" so that if there is a possibility of penal servitude being the proper punishment for an offence, it cannot be tried by a district or garrison court martial?—That is so. If you are content with a lesser punishment, then, as I apprehend, the practice of the army is to send the offence to a court of less authority.

Chairman.

689. Directing your attention to the 9th section of the Mutiny Act, is not the result of that this; that if an offence has the penalty of penal servitude attached to it, it cannot be tried by anything less than a general court martial?—If you want that punishment to be inflicted, I think you will find that that is the way in which the law is worked.

Sir HENRY THRING, K.C.B., re-called; and further Examined.

Sir  
H. Thring,  
K.C.B.

Colonel Loyd Lindsay.

692. MIGHT not this scheme of differential punishments which you propose to introduce into the Mutiny Act equally be left to the discretion of the Commander in Chief, to be dealt with by him through Queen's Regulations or circulars, and might you not so arrive at the object which you have in view?—Certainly not. I do not

Mr. John Holms.

690. (To Sir Henry Thring.) Am I to understand that, if your amendment was carried out, and the lesser punishment substituted for the greater, you would in reality be carrying out, to some extent, that which his Royal Highness the Duke of Cambridge told this Committee that he had put before the commanding officers of this country in relation to the insubordination of young soldiers: "It appears to his Royal Highness that in many instances young soldiers of good character have been tried by court martial for this crime, who might with greater advantage to the service have been dealt with summarily by their commanding officer"?—It would facilitate the carrying out of that view; because, when we came to give power to a commanding officer, we could say at once that he could try all offences in respect of which no greater punishment than imprisonment was directed, if he thinks that he can adequately punish them by his own power.

691. Then it would be easier, under this amended clause, to carry out that view than under the clause as it now stands?—I think so. (Mr. Clode.) The principle really involved in the Mutiny Act, as distinguished from this Bill, is this; the Mutiny Act has always been framed upon the theory that the soldier is to be governed and punished by his officer; and hence, if you now desire to have two codes, you would be in a sense violating the principle which has hitherto regulated the army. I am not pretending to express an opinion as to whether that be expedient or not, but the measure of punishment has always been left in the breast of the court, upon the theory that, the court being constituted of men who are responsible for the discipline of the army, they will apportion the punishment with relation to the moral guilt of the offence, and to the circumstances in which the army is placed; but when you lay down two lines, one for time of peace and one for time of war, you are certainly departing from the traditions which have governed the army, for hitherto Parliament has thought it expedient to entrust the court which it has constituted with a very wide discretion.

Colonel Loyd Lindsay—continued.

like to trouble the Committee with legal discussions, but I do not agree that the punishments under the Mutiny Act lie in the breast of the court; they are differentiated by the tribunal. If an offence goes to the commanding officer, he can only give certain punishments; if it goes to a regimental court martial, it can only give a certain other

Colonel *Lloyd Lindsay*—continued.

other punishment, and so forth. It does not lie in the breast of the court, because they cannot give more than a certain punishment; and I have done exactly the same here, only that I have differentiated by the punishments, as in the Naval Discipline Act, instead of by the tribunal.

693. Let me read to you a passage out of a Horse Guards' Circular in 1864: "Having submitted to the Field Marshal Commanding in Chief your letter of the 8th instant on the subject of the proposed improvement in the administration of military justice, I am directed to request that you will acquaint the Secretary of State for War that although the Mutiny Act and the Articles of War fix no limit to the power of the district court martial as regards the award of imprisonment, and yet, by the Queen's Regulations, the maximum term of imprisonment which such tribunal can adjudge is limited to six months?"—Quite so, and that is the regulation which I wish to have obeyed, which is not obeyed now. Instead of imprisoning for six months, they too often imprison for a year and two years.

694. The Queen's Regulations go inside the Mutiny Act?—Certainly, but you cannot alter the jurisdiction.

695. But the Commander in Chief may direct that the court martial shall award a lesser punishment?—No, he can do no such thing; the court martial may disobey him to-morrow, if it likes. (Mr. Clode.) I apprehend that the Queen's Regulations cannot in any degree affect the jurisdiction which is vested in the officers.

General *Shute*.

696. (To Sir *Henry Thring*.) Having regard to the Queen's Regulations, to General Orders, and to other powers of mitigation, is it not the fault of the officers at the head of the army if the punishments awarded in the army are unnecessarily severe?—Certainly not; all that he can say is, "I recommend you to do so-and-so;" but the courts martial may, and do habitually disregard his recommendations.

*Chairman*.

697. I think the honourable and gallant Member for Brighton has not drawn a distinction between the awarding of the punishment and the execution of the sentence; I presume that the highest authorities of the army would have the power of remitting sentences?—The Queen can remit sentences.

698. At all events, as regards the awarding of sentences, I conceive that that is entirely in the hands of the court martial, is it not?—Certainly, and of the confirming officer.

Major *O'Beirne*.

699. Has the Commander in Chief power to set aside the decision of a court martial which has been re-considered?—Certainly not, if it is confirmed. (Mr. Clode.) Only through the prerogative of mercy, of course. (Sir *Henry Thring*.) Of course, he can recommend the Queen to remit the sentence.

*Chairman*.

700. Passing now to Clause 16 of the Bill, as to insubordinate behaviour, how far does that differ, if at all, from the existing law?—It does not differ practically at all.

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*Chairman*—continued.

701. I observe that many of these offences, as for instance impeding the provost marshal or any officer legally exercising authority, which seems a very grave offence, are to be only punished with imprisonment; so that there the maximum punishment is very much lower than in the preceding clause, where the punishment for the disobedience of a lawful command is penal servitude?—That is so. That is owing to the fact that the disobedience to the lawful command of a superior officer is in the Mutiny Act, and that the Mutiny Act imposes penal servitude or death in respect of it. The Articles of War at the present moment prohibit penal servitude or death being inflicted in respect of any punishment defined by those articles.

702. Therefore these being offences of quite as grave, if not graver character, a lesser punishment is attached to them simply because they have been created by the Articles of War, and not by the Mutiny Act?—Yes; I am bound to say that it is so.

703. In re-casting the law, and putting the subject-matter of both the Mutiny Act and the Articles of War in a statute, would it not be well to consider the gravity of the character of the offences with reference to the penalties?—Certainly; and if the Committee will instruct me to do so, I will endeavour to re-cast them.

704. Amongst the offences specified in the 16th Clause, are behaving with contempt to a superior officer, refusing to obey an officer (though of inferior rank) who orders him into arrest; or impeding the provost marshal or any other officer legally exercising authority, and so on; does it not strike you that it is rather singular that all those offences should be subject to a punishment not exceeding imprisonment, when in the preceding clause, disobedience to a lawful command is punishable with penal servitude?—I should have thought so; I would suggest to the Committee, that behaving with contempt to a superior officer ought to be omitted, because I presume it comes within the meaning of using threatening or insubordinate language.

705. I do not want to go into any detailed amendment of this clause, but only to call your attention to the fact, that very often offences of a less heinous nature have a much more severe punishment because created by the Mutiny Act, than offences quite as grave created by the Articles of War?—Certainly; if the Committee will instruct me to re-cast these clauses, I can do so.

706. It is not the business of the Committee to amend and settle this Bill, but rather to make suggestions to those who will ultimately be responsible for it?—I will take care to attend to those suggestions.

*The Judge Advocate General*.

707. The words "otherwise than as aforesaid" refer to "the execution of his office;" do they not?—Yes.

708. Are there any cases when a superior officer is not in the execution of his office?—Certainly; there are the cases which we have already discussed.

Sir *Alexander Gordon*.

709. In regard to Clause 16, may not the offence of using traitorous or disrespectful words regarding

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regarding the Sovereign, which is to be punished only by imprisonment, be a most serious thing?—That is so punished now, I believe.

Sir Henry Havelock.

710. Then again, in Sub-section 2, behaving with contempt to a superior officer is an offence which is not known to military law, is it?—That is taken from Sections 17 & 18 of the Naval Discipline Act. Will you allow me to draw your attention to the fact that Article of War, No. 189, declares that, "No person subject to the Mutiny Act shall be sentenced to suffer any punishment extending to life or limb, or to be kept in penal servitude by virtue of these our Articles of War, except for such crimes as are expressly declared by the Mutiny Act to be so punishable." Therefore, wherever the Article of War creates the offence, and not the Mutiny Act, the maximum punishment is imprisonment. I may sometimes have made a mistake when you asked me whether a particular thing is in the Mutiny Act or in the Articles of War, but that is the reason of the distinction.

Chairman.

711. Inasmuch as these offences in the 39th Article of War are made punishable by general, district, or garrison court martial, it is quite plain that those offences could not be punished by death or penal servitude?—That is so; but I will carefully look through them, and state that the clauses are not approved by the Committee, in their present form.

712. We come now to the question of desertion; you have drawn up a memorandum upon that subject; but will you state briefly to the Committee what are the changes which are proposed in this Bill with reference to desertion?—Those changes no doubt are very considerable, and they consist principally in this: under the present law there are three offences; desertion, absent without leave, and fraudulent enlistment. Desertion, as originally defined by the Mutiny Act, means desertion from Her Majesty's service, and that is supposed, rightly or wrongly, to be the real definition of desertion; the going away from Her Majesty's service without any intention of returning. The difficulty that arose in respect of that species of desertion was very soon found out, and now it especially arises. Men go away, and then they immediately fraudulently re-enlist in another regiment; I do not know exactly why, unless it is in order to get a free kit. There are a set of floating vagabonds in the army, the most troublesome I believe of all the military offenders, men constantly going from one regiment to another; they desert from one regiment and they enlist in another, without giving any notice that they belong to the army; and they thereupon get a free kit and a number of advantages; and so they go on, leading a sort of vagabond military life. In common language, of course, when a man has re-enlisted in another regiment, he cannot be taken to have deserted from Her Majesty's service; and in order to meet that, instead of making fraudulent enlistment punishable *qua* fraudulent enlistment, it

Chairman—continued.

was declared that a man who deserted from his regiment and re-enlisted, was a deserter, and was a deserter from the very regiment into which he re-enlisted; therefore desertion has assumed quite a different aspect from what it ordinarily meant, and I should, as a lawyer, call it in that case, constructive desertion. So that they have those two offences of desertion and constructive desertion. Then there is the offence of absence without leave, which, of course, explains itself. A man goes away and he intends to return, but he gets drunk, or something or other, and does not return; therefore absence without leave does not require any particular explanation. I thought it my duty to make an analysis of all the clauses relating to desertion, and absence without leave, which I have put before the Committee. I sent that memorandum in very nearly the same form to the War Office, and I submitted to them: that it was not advisable to continue the crime of constructive desertion if it could be otherwise met. I submitted to them that it was not advisable to use such non-natural language, as I think it is to say that a man shall be tried for deserting from a regiment into which regiment he had just enlisted; and I also submitted that I thought that on the whole it was not expedient to have so many men treated as deserters who, in effect, were merely guilty of fraudulent enlistment. That was submitted to the War Office, and they agreed in the main with my memorandum, that they would abolish constructive desertion, and that they would punish fraudulent enlistment as a substantive offence. Therefore the substantive alterations in principle are these; that, instead of talking about desertion from a regiment, I have confined desertion to deserting to the enemy and to deserting from Her Majesty's service, by which is meant leaving it without the intention of returning. Then comes Clause 18, with which I need not trouble the Committee; and then comes Clause 19, with regard to the offence of absence without leave; and then in Clause 35 is the offence of fraudulent enlistment.

713. Then I understand that the main principle of your alteration is, that you have confined desertion to what desertion really means, viz., leaving the service, and that you have put under a different category the offence of persons transferring themselves from one regiment to another, and so forth, which is not in point of fact desertion, but is an offence of a different character?—It seemed to me to be so; and I understand that it is in the main agreed to by the War Office.

714. Have you made any changes in the matter of a soldier absenting himself without leave?—I think not.

Sir Alexander Gordon.

715. With reference to the first two lines of this memorandum, if we are to accept it as our opinion, that desertion is leaving the service with the intention of not returning; practically, is there not very great difficulty of proving the intention?—The memorandum is mine, and the Committee are not responsible for it.

Mr. JAMES CORNELIUS O'DOWD, re-called; and further Examined.

Chairman.

716. HAVE you had considerable difficulty in the Judge Advocate General's Office on the subject of convictions in the matter of desertion?—It has been, I may say, the principal subject of difficulty with us in my time.

717. Will you state what you have found to be the difficulty with respect to the existing law in the matter of desertion?—The difficulty principally arises from a very wide variance in opinion as to what constitutes desertion. What might be called the old common law definition of it was, absence without leave, accompanied with an intention of not returning; that was, and I believe always has been, or at least for many years it has been the theory; but in practice, it has only been carried out probably within nine or 10 years. Mr. Mowbray, when Judge Advocate General, was I believe first struck with the difference between the practice and the law as it ought to have been understood; but he did not act to any very great extent upon his view. His successor, however, Sir Colman O'Loughlen, did act very strongly and very decidedly, and caused, I believe, a considerable sensation amongst the army, who had been for a long time accustomed to the erroneous theory that it was not necessary to prove an intention of not returning.

718. Will you give us instances of convictions for desertion which you do not think properly come under the head of desertion?—I may illustrate it in this way: an ignorant soldier not knowing anything of the meaning of the word desertion, has, we will say, been arraigned on a charge of desertion; he pleads guilty; but when called upon for his defence, he points out that he was only away for two or three days, that he went and fell into bad company and drank, and came back in three or four days, or meant to come back in three or four days if he had not been caught, and that he really had not the slightest intention of leaving; and a good many things, perhaps, corroborate that statement of his. In that case a man pleads guilty to desertion, who has really not committed that offence.

719. In a case of that kind, you hold that he ought not to have been arraigned for desertion, but for absence without leave?—Certainly.

720. Then the nature of the difficulty of which you speak is that it often happens that men who are absent in this kind of way, and who without any *animus non revertendi* are arraigned for desertion, ought merely to be charged with absence without leave?—Quite so; and when the proof of the charge of absence without leave would be simplicity itself.

721. There is or ought to be an essential distinction between the culpable desertion of a man who intends to go away and simple absence on a lark?—Yes.

722. How do you propose to obviate the difficulty of these cases?—Looking at Sir Henry Thring's draft, it occurred to me that there were two ways of doing it: either to eliminate the word "desertion" altogether from the Military Code or to define it. I think that one of those two things is absolutely necessary to remove what I believe is one of the practical blots on our administration of military law.

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Chairman—continued.

723. I understand you to say that you find this a very fruitful source of the miscarriage of justice on courts-martial?—Yes.

724. If you were to eliminate the word "desertion," you must have something corresponding to it?—My idea is this: the word "desertion," is a kind of compound word; it means absence, and something else. If you try the man for the absence simply, the something else, which we will say might legally justify a charge of desertion, would also be in evidence before the court, or I should think it ought to be, and they can have it in their minds in settling the amount of punishment which the prisoner shall be subject to.

725. There is an offence known to the civil law of a man deserting his wife and children, or cruelty coupled with desertion?—Yes, I had occasion once or twice to look into it in Mr. Cardwell's time; and the dictionary meaning of the word is what is given to it by Simmons, in what we call the Common Law of the Army; but that certainly is not what was understood by many eminent persons in the army.

726. I suppose that in the civil law it is necessary to create certain offences that they should be coupled with desertion; going away for a day or two does not mean desertion?—A man may be a red-handed deserter and may not be away half a day, because he may be caught say in Cork Harbour on board a steamer going to America.

727. In that case it would be evident that he had no intention of returning?—Quite so. If the soldier, instead of being charged with desertion, was charged with being absent without leave, the court would have all the facts in their mind, and they could give him just the same punishment as they do now, without having their proceedings complicated and the chance of their decision being reversed by bringing in a very compound and doubtful word.

728. The other alternative which you suggested is, that there should be some interpretation given of desertion, which should prevent the grave offence of desertion being charged against people when their absence was not of a culpable character?—That, I think, would be possible, but I think the other course would be the simpler and the more practicable. I should have no objection to keeping in the provision as to men deserting to the enemy, because the act is plain. A man goes from one army to another; it is a physical act which is very easily described, and can have, I suppose, but one meaning.

729. There would be two ways, would there not, of doing it; the one would be that the word desertion should be defined in the Act, and the other would be, as has been suggested to the Committee already, that there should be certain regulations laid down as to the circumstances under which charges of this kind should be brought?—That would be very useful, and probably would have the desired effect in the great majority of cases; but I confess that I think a statutory dealing with the thing would be far more satisfactory.

730. I do not know what your experience has been

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been as to how far regulations of that character have substantially governed courts-martial?—They are not invariably attended to, I am sorry to say.

*Sir Alexander Gordon.*

731. Do you not think it important to keep up a difference between the trial of desertion and that of simple absence without leave?—I think the distinction is the punishment, and that ought to vary with the circumstances of the case.

732. Would it not destroy the term desertion, and interfere with the reward for apprehending men who are really deserters?—Some new arrangement would have to be made under that head. I think that the present arrangements are open to some abuse.

733. Have you contemplated what changes would be necessary?—No.

734. You state that frequently erroneous decisions are given by courts-martial; have you ever thought of the proposal of circulating through the army the cases where erroneous decisions have been come to, and your remarks upon them?—I have always thought that it would be a most useful thing.

735. Are you aware that any objection has been made to it?—No.

736. If you think it is desirable, why is it not done?—I can only say that it does not rest with me to do it. I should be very glad to see it done.

737. Is it not competent for the Judge Advocate General to circulate to the army the decisions that he gives on military trials?—As to his competency I would rather not speak; but it would be quite contrary to military usage. In fact, his remarks upon these proceedings are in the nature of confidential communications, and may sometimes reflect upon individuals in such a way as to render it undesirable that those remarks should be made public to the whole world.

738. I only suggest that the Judge Advocate General should make a selection of cases where mistakes had been made, and have them circulated for the instruction of others; are you aware that that was done some 40 or 50 years ago?—I have never seen it, but I think it would be a very useful thing to have a digest of the decisions of the Judge Advocate General's department upon points of military law.

*Chairman.*

739. It has been suggested to me, and it seems a very valuable suggestion, that with reference to desertions from the army it might be possible in a good many of these cases to treat them civilly; that is to say, that if a man who had deserted was caught in a country village, you might have him up before the petty sessions, and so dispense with the necessity of carrying him off in state to be tried by court-martial elsewhere, it being a breach of contract, and being an offence which might be properly dealt with civilly; do not you think that it would make much less stir if it were dealt with in that way?—You might do that with the militia, but with the regular army I think you could only do it in the case of a man whom you did not want to keep. If you want to try a man before the civil power you

*Chairman*—continued.

may have to send witnesses as to his identity, and so on, from the regiment to the village where he is picked up.

*Sir Alexander Gordon.*

740. Would it not be more expensive to the public?—I should think it probably would be.

741. And might it not be more hard upon the soldier; might he not be more hardly dealt with by a magistrate who did not know the circumstances of his previous career?—I do not think he would get off cheaper before a magistrate.

*The Judge Advocate General.*

742. I think you used the expression miscarriage of justice in cases of desertion; you do not think that there is any practical miscarriage of justice in cases of desertion, do you; that is to say, you do not think that any deserters who are actual deserters or constructive deserters are visited with any undue punishment?—I think that the fact that the question was taken up very earnestly by Sir Colman O'Loughlan some eight or nine years ago, has caused a very great improvement in the procedure of the army, and that very much fewer men are now arraigned for desertion who are not deserters than there were before.

743. Then you do not think that there is any practical miscarriage of justice in regard to desertion?—No, I do not think that there is so much now.

*Sir Henry Havelock.*

744. You are aware, of course, that by the 43rd Article of War, the option remains to the court who try the man of finding him guilty either of desertion or of absence without leave, according to the evidence?—Yes.

745. And you are aware that that is a discretion which is constantly exercised?—I am afraid not so often as it ought to be; I wish it were.

*The Judge Advocate General.*

746. But that has nothing to do with the extent of the punishment?—No.

747. You do not think that men who are now charged with desertion or with absence without leave, are unduly punished, do you?—I think that sometimes men are very unduly punished; I do not say generally.

*Chairman.*

748. What I understand you to say shortly is this, that you think in many cases men are charged with desertion who ought to have been charged with absence without leave?—Quite so.

749. And in consequence of being so charged with desertion, instead of absence without leave, they get a heavier punishment than they ought to have had for the offence which they have committed?—Yes; and being convicted of desertion, they incur forfeiture of all their service.

750. Consequently, from the fact that the charge of desertion is preferred, and that they are convicted upon that charge, they undergo heavier penalties and forfeitures than they ought to incur from the character of the offence?—Yes.

*The Judge Advocate General.*

751. Do think that any cases of that description have arisen lately?—Very few lately.

752. Do

General Shute.

752. Do you consider that, when approved by the military authorities, there are not many instances in which cases of desertion and fraudulent enlistment, when committed in the United Kingdom, might with advantage be disposed of by two justices of the peace at petty sessions, the accused, if convicted, to be punished, or in very grave cases, with previous convictions or other aggravating circumstances or committed to prison for trial at the next quarter sessions or assizes, or by a court martial?—I believe that that is done very largely in the case of the militia; I do not mean to say that might not be done also in the case of the regular army, but I have already stated, in answer to General Gordon, that I do not think much would be gained by it.

753. If such a course were adopted, do you not think that it would prevent the scandal of soldiers being constantly marched about the country handcuffed under charge of military escorts, thereby causing the population to sympathise very much with deserters?—Yes, I think so.

754. With regard to the difficulties and expense, could they not with perfect facility telegraph either for an officer to appear, or for the necessary documents from the regiment as to previous convictions and descriptions, and so on?—In some cases there would be a convenience, and in others an inconvenience. It depends upon the locality, and the number of witnesses that you would have to bring, and so on. For

General Shute—continued.

instance, suppose the regiment is at Aldershot, and the man is found at Perth; of course, if the man is caught at Perth, and pleads guilty, all that you have to do is to give formal evidence; that one witness can give; and you send the witness from Aldershot to Perth, and the whole thing is over. If, on the contrary, the man does not plead guilty, and you try him at Perth, you will have to get the serjeant who was in charge of the barrack-guard at the time of the desertion, and the men who are aware of the deserter's absence and the deficiency in his kit; he may call witnesses from the regiment whom you would find great difficulty in refusing him the power of examining; and I can imagine cases in which it would be a great expense. But the advantages or the disadvantages would depend upon the circumstances of each particular case.

755. My question only referred to cases in which such a procedure was approved by the military authorities?—Yes; I did not bear that sufficiently in mind. I can imagine some cases in which it would be a great advantage.

756. Do you not think it desirable that the public generally should feel that fraudulent enlistment or desertion is as much a crime against the taxpayer as against the army; that it is, in fact, a civil as much as a military offence, and would this be effected by making those persons who had committed those offences amenable to civil as well as military jurisdiction?—Yes.

Mr.  
O'Dowd.  
21 June  
1878.



*Tuesday, 25th June 1878.*

MEMBERS PRESENT:

Mr. Campbell-Bannerman.  
Admiral Egerton.  
Sir Alexander Gordon.  
Sir William Vernon Harcourt.  
Mr. Hayter.  
Mr. Staveley Hill.  
Viscount Hinchinbrook.  
Mr. John Holms.

The Judge Advocate General.  
Colonel Loyd Lindsay.  
Mr. Merewether.  
Colonel Mure.  
Major O'Beirne.  
Mr. Parnell.  
General Shute.  
Sir Henry Wilmot.

SIR WILLIAM GEORGE GRANVILLE VERNON HARCOURT, Q.C.,  
IN THE CHAIR.

Sir HENRY THRING, K.C.B., re-called; and further Examined.

Sir  
H. Thring,  
K.C.B.  
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*Chairman.*

757. I THINK at the last meeting of the Committee we had reached Clause 17 of the Bill; will you now go through the Bill from Clause 18, clause by clause, and explain it to the Committee?—Clause 18 has practically no alteration made in it, having regard to the principles that were stated upon Clause 17.

758. Is any alteration made in Clause 19?—Clause 19, as I have already explained, stands as it did before, subject to the observations which I have made with respect to mutiny and absence without leave.

759. Is there any alteration in Clause 20?—Clause 20 is precisely in the same words as the original Articles of War; at all events there is no material alteration made in it. Then when we come to the provisions as to disgraceful conduct, those are the same as the Articles of War, with the exception of an alteration in the arrangement. Article 99, relating to officers whose characters are publicly impugned, is not here, as I propose that it should be, put into an Article of War. It appeared to me to be not a statutory provision, but a directory provision. It was discussed before in the early part of the Bill, I think, as being an illustration of the difference between what should be statutory and what should be directory. As an illustration of the difference, there are certain commands, as you may call them, which have what lawyers call a sanction, or what I should call a punishment annexed to them. Those are statutory. There are also a series of commands which are directory only, and which have no punishment annexed to them, but which are in the nature of mere ordinary directions from a superior authority. I understood the Committee to assent to my proposition that a considerable number of the Articles of War which were directory, and had no sanction, should remain Articles of War, the proposal having been from the first only to put into the statute offences which have punishments annexed to them. My scheme will show

*Chairman—continued.*

that it was never intended to include all the Articles of War.

*Sir Alexander Gordon.*

760. I understood that these Articles of War which were not put in the statute were to be included under the rules issued by the Sovereign which would take the place of the present Articles of War?—I thought the Committee assented to my proposal to keep what was statutory separate from what was merely directory; I said that if any offence was to be considered as penal it ought to be considered in the statute; but I thought the Committee assented to the proposition that nothing could be, I will not say, more objectionable, but more unnecessary, than to put into a solemn statute a direction, for instance, as to how an officer should act when his character was impugned; and I recollect stating at the time that it was not a case for me to give an opinion upon, but that to make it obligatory upon an officer always to mention some petty insult which he might be very willing to pass over, did not seem to me a wise thing to put in the statute; but at the same time I said that I did not think it was for me to give an opinion upon so delicate a subject, and I thought the Committee assented to that. Then the other alteration that I have made in it is, that I have put the 80th Article of War, as to the embezzlement of public money, under the heading of offences relating to property. It appeared to me to be clearly a property question.

*Admiral Egerton.*

761. Those are rather alterations of form than of principle, are they not; there is no change of principle, is there?—No, but I understood that the Chairman asked me to state shortly what the alterations were. It is a mere alteration of arrangement.

762. The

*Chairman.*

762. The only alteration is that you have not included Article 99, because you did not think it came within the purview of the plan that you have made?—That is so.

763. You have not altered anything that exists; all that you have done is that you have not incorporated Article 99, but you have left it as an administrative detail in the Articles of War?—Yes; I have omitted Article of War No. 82, as to holding inquiries on maimed soldiers, on the ground that it is not necessary to put it in the statute for the same reason.

*Admiral Egerton.*

764. That, again, is only an alteration of arrangement?—That is all.

*Chairman.*

765. Passing to Clause 22, is there any alteration made in that?—There is no material alteration made in Clause 22 or in Clause 23.

766. Is there any alteration made in Clause 24?—Clause 24 is altered in this manner. Article of War, No. 76, says: "If any officer shall be drunk on any duty under arms, he shall, on conviction thereof before a general court martial, be sentenced to be cashiered." It was thought inadvisable to make the sentence absolute, but at the same time it was thought advisable to add to its stringency. Therefore, on the one side, it is made more stringent, and on the other side it is relaxed; and in my Bill it runs thus: "Every officer who is guilty of drunkenness, whether on duty or not on duty, shall be liable to suffer any punishment not exceeding cashiering." Therefore the clause states

*Chairman—continued.*

not that he be necessarily cashiered, but that he may be cashiered if he is guilty of drunkenness, though not on duty under arms.

*Mr. Hayter.*

767. Any officer on leave, who gets drunk, may be liable to any punishment not exceeding cashiering, whereas it was formerly limited to his getting drunk when on duty under arms?—That is so.

*Chairman.*

768. Would this apply to an officer not in barracks, if he was on a visit?—Practically it does not apply, but technically I am told that it does apply. It was intended deliberately to apply in the case of an officer getting drunk and disgracing himself exceedingly, of which I am sorry to say there have been some cases; but, practically, I understand that it would not apply unless it was a notorious case which excited a great scandal.

769. At present I imagine that the 76th Article of War would hardly apply to an officer in the mess-room?—I should think certainly not. I presume that "under arms" only means when he is actually on parade; it is "on duty under arms."

*Mr. Hayter.*

770. But he is not on duty under arms in the mess-room?—Certainly.

*The Judge Advocate General.*

771. He might be if he was orderly officer?—Yes.

Colonel J. H. ROCKE, re-called; and further Examined.

*The Judge Advocate General.*

772. WHAT do you say with regard to this point?—This Article of War only applies to an officer being actually under arms.

*Mr. Hayter.*

773. He might be the picket officer on duty, but he would not be an orderly officer at the mess table?—He might be the orderly officer at the mess-room, and he might be on duty under arms.

*Colonel Mure.*

774. You are aware, are you not, that mess is a parade?—Undoubtedly.

775. Would not an officer at mess, therefore, come under the head of being on duty?—I should hesitate to say that an officer dining at

*Colonel Mure—continued.*

mess would be considered to be under arms on duty.

776. An orderly officer at mess would be under arms on duty, would he not?—Certainly. It may be difficult to define exactly the offence of drunkenness on duty "under arms"; but, in general terms, I may say that an officer may be tried under this Article if he was drunk on duty; if not on duty he would be liable, under the 105th Article of War, to punishment for conduct to the prejudice of good order and military discipline.

*General Shute.*

777. Do you know how long that special Article has been in force with regard to officers?—It is as old as my service, certainly.

Sir HENRY THRING, K.C.B., re-called; and further Examined.

*The Judge Advocate General.*

778. I BELIEVE that it was done in order to place the offence of the officer in a similar position to the offence of the soldier, was it not?—Quite so.

*Mr. Staveley Hill.*

779. The provisions with regard to drunkenness are an alteration, to a certain extent, of the law as it at present stands?—Certainly, to the extent which I have stated.

Sir  
H. Thring,  
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Colonel  
J. H. Roche.

Sir  
H. Thring,  
K.C.B.



Mr. CHARLES M. CLODE, re-called; and further Examined.

Mr. Clode.

Colonel Loyd Lindsay.

25 June  
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780. WHAT have you to say as to the clause which is now under the consideration of the Committee?—Perhaps I may advantageously state what is apparently the history of the clause that we are discussing. The first record of the 76th Article of War is found in the Articles of 1717; it was altered in 1748; and the whole clause was re-cast, I think, in the year 1869. With regard to the distinction that is made as to the soldier being drunk on duty, or not on duty, he was only liable to punishment for drunkenness on duty until the year 1870; and, in the year 1870, the clause was extended so as to make a soldier guilty of an offence, in the event of his being drunk off duty. That is the history of the clause which we are discussing. With regard to the change that is made here, if my opinion be asked as to its expediency, my opinion is that it is a very expedient alteration to have had made. It is an offence, no doubt, in a sense, equally on the part of the soldier or of the officer, if he is drunk off duty; but unquestionably it is a far greater offence for an officer to be drunk upon duty than for a soldier to be drunk upon duty, according to all the traditions of the service. No man expressed the view more strongly than the Duke of Wellington did in his despatches, of looking upon the officer as an example to the soldier, and requiring from the officer a much stricter fulfilment of his duty than he ever expected from the soldier.

Admiral Egerton.

781. That applies to an officer on duty, but does it apply to an officer off duty?—Drunkenness off duty has never been made an offence until now, otherwise than as disgraceful conduct.

Colonel Mure.

782. Then do you recommend that the clause should be as it stands in the 17th Article of War, or do you recommend its relaxation?—I recommend its relaxation. My impression is that Clause 24, as it now stands, is an expedient clause to adopt. With regard to being drunk off duty, it places the officer and the soldier on the

Colonel Mure—continued.

same footing, which I think they should be; and it enables the Crown in cases of what may be called accidental drunkenness, to deal with an officer in a more lenient way than the present articles justify.

Admiral Egerton.

783. Had it been the practice hitherto that an officer in plain clothes who is drunk, say at the club at Malta, could not be tried by court-martial?—That would rather be a question for a judge advocate to answer.

Mr. Campbell-Bannerman.

784. There are three conditions in which an officer may be in the course of a year: on duty, off duty with his regiment, and on leave away from his regiment; I presume that the term "not on duty," includes absence on leave, so that when an officer is absent from his regiment on leave, he is in the same position in the eyes of the law as when he is with his regiment, but not on special duty?—It is a question which has been a good deal discussed, whether an officer "on leave" is amenable at all to military discipline. In William the Fourth's time the subject came before the Board of Admiralty with reference to the navy, and possibly Admiral Egerton will know more about it than I do. Then it was assumed that an officer, although on leave, was amenable to military discipline. In *ex parte* Poe the officer was coming home on board ship "on leave," and although the question did not directly arise, yet I think it must be held from the ruling of the court that he was liable to military law. It is a question upon which there is no express decision.

Sir Alexander Gordon.

785. The guiding principle of that rule is that all persons who are in pay are amenable to military discipline; an officer on leave receives the pay of the State, and he is liable to the provisions of the Mutiny Act?—Yes, in regard to any military duty. The same principle, of course, would apply to a soldier on furlough.

Sir HENRY THRING, K.C.B., re-called; and further Examined.

Chairman.

Sir  
H. Thring,  
K.C.B.

786. Is there any explanation which you wish to offer to the Committee upon this point?—If the Committee would allow me, I wish to explain that, although the alteration is a very important one in form, it really is not so in substance. The reason why it was put in was to avoid the extremely strong contrast between the officer and the soldier. The officer could apparently only be punished for being drunk when on duty or under arms, but the soldier could be punished whether on duty or not on duty. It appeared to those who instruct me, and to myself, that that was a very unfavourable way of putting the clause, and therefore we put it in the form in which it stands now. An officer may be tried for being drunk on duty when not under

Chairman—continued.

arms, but he is tried under Article of War No. 105, for being guilty of conduct contrary to good order and discipline. The Committee will see that it is in great part only an alteration of language. It has been relaxed, and the man, instead of being necessarily cashiered, may be cashiered only as an extreme measure. If I might be allowed to say so, I would submit that there are instances in which a man ought not to be cashiered for being drunk on duty under arms. There are instances where a man has been ill, and has taken a glass of brandy in a cold climate under circumstances which we all know will produce an apparent drunkenness, and it would be an extreme hardship to cashier him for that. But I would submit to the Committee that it is an alteration

*Chairman—continued.*

alteration more of form than of substance, and that it is most inexpedient to put forward to the public in this broad form that an officer cannot be punished for getting drunk on duty when not under arms, whereas in fact, under another section which they would not understand to be applicable, he can be so punished.

*Sir Alexander Gordon.*

787. Would not your object be gained by adding to Clause 76 another paragraph, stating that an officer drunk on duty, not under arms, may be liable to such punishment as may be awarded?—Certainly, if you wish it in that form; that is a mere alteration in form.

*Colonel Mure.*

788. But surely there is a difference between “may” and “must;” in this Article of War an officer drunk on duty must be tried by court-martial and must be cashiered?—Certainly, I do not dispute that it is a relaxation.

*Sir Alexander Gordon.*

789. In fact, drunkenness on the part of an officer when on duty under arms is under this proposal not considered so great a crime as it has hitherto been?—That is so.

*Colonel Loyd Lindsay.*

790. Do you see any way of adding words in order to meet that point which is raised by the honourable and gallant Member, consistently with carrying out the principle contained in the clause?—Certainly; there is no difficulty at all in doing that if the Committee wish it. I will not pretend to give the exact words, but it might run somewhat in this way: “Any officer who is guilty of drunkenness shall, if he commit such an offence when under arms, be cashiered; if he commit such an offence when not under arms, he shall be liable to suffer any punishment not exceeding cashiering,” or whatever the Committee think fit.

*Chairman.*

791. Going back for one moment to Clause 23, I see that there are words there which are taken from the 81st Article of War, that “every soldier who is guilty of any disgraceful conduct of a felonious, fraudulent, cruel, indecent, or unnatural kind, shall be liable to suffer any punishment not exceeding imprisonment;” what does “felonious conduct” mean there; does it mean felony?—Felonious conduct either means felony or it means nothing. Felonious conduct is construed to mean what we should call felony. There has been a great deal of difficulty about it, in this way: When a man forfeits certain good conduct pay by being guilty of felonious conduct, then I believe that one set of gentlemen think that it must necessarily be what we should call a felony; and others think that felonious conduct means anything that is in the nature of a civil crime; that is to say, in the nature of larceny, or anything approaching felony.

792. That may be all very well in the Articles of War; but do you not think that when you put a crime in a statute you should have something a little more intelligible than “felonious conduct”?—I should only be too happy to alter 0.111.

*Chairman—continued.*

it if the Committee would express any opinion whatever upon it.

793. If it is felony, then a punishment not exceeding imprisonment seems a great deal too light; and if it is not felony I want to know what it is?—What we call felonies are usually tried by the civil tribunals. The felonious conduct for which they usually try a man is what is a very prevalent and serious offence amongst soldiers; that is to say, they steal each others' shoes and kit and small articles, and thereupon when they steal from each other they are tried for felonious conduct; but they also may try them under the special Article if they like. All the lawyers on the Committee would admit that there is hardly any crime which is not either felonious, fraudulent, cruel, indecent, or unnatural; if you examine the matter logically I know no crime which does not come under one of those categories; but what I believe they try men for mostly under that article is petty thefts and acts of that description which one soldier commits towards another. The “indecent or unnatural” kind of course explains itself.

794. If that means an unnatural offence it seems very extraordinary that the military punishment of it should be of so very different a character from the civil punishment of it; but I should imagine that it means something less than that?—I presume that it means something less than the actual offence.

795. Does it appear to you that such a general clause as Clause 23 is a good clause to have; would it not be far better to rely upon something more specific in the way of offences, than to have such a loose clause as that, which nobody can understand?—It appeared to me, personally, that it was an extremely bad law. When I first drew the Bill, some years since, I struck it out as being altogether a bad and illusory clause; on this particular occasion I was under a special difficulty as to what should or should not be omitted, and I thought it better to put it in. I have myself the strongest opinion against the clause.

796. Does Clause 25 contain any alteration of the existing law?—Clause 25 is not substantially altered.

797. Will you take care to call our attention to the fact that the punishments are made more elastic in your clause, because we passed Clause 21 without any observation, in which it is said that an officer guilty of scandalous conduct shall be liable to any punishment not exceeding cashiering, whereas in the Article of War he is made absolutely liable to cashiering?—I am very sorry for that; but I admit that I do not always quite recollect what changes are made. Clause 25 and Clause 26 I believe to be substantially unaltered.

*Mr. Merewether.*

798. The punishment in that article is an open punishment; he is “liable to be cashiered or suffer such other punishment”?—Yes.

*Mr. Campbell-Bannerman.*

799. But there is an alteration in Clause 25, because according to the 72nd, 73rd, and 74th Articles of War, when those offences are committed by an officer, the officer is liable to be cashiered,

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cashiered, but the new Bill does not say that an officer who commits any of these horrible offences shall be cashiered?—Yes; but cashiering is less than imprisonment.

Mr. Staveley Hill.

800. In the 74th Article of War the offence is "unnecessarily detaining any prisoner in confinement without bringing him to trial," but you make it "without bringing his case before the proper authority for investigation"?—Yes, I have printed in parallel columns for the Committee the original articles on those offences; but it is utterly out of the question that I can give all the minute alterations. I have done it as honestly as I can.

Chairman.

801. You have given a higher punishment here, according to your scale, than existed before, by omitting the words "shall if an officer be cashiered;" that is to say, an officer who did these things before, could only be cashiered, and now he can be imprisoned?—Yes; that is quite possible.

802. Therefore in that respect it does apply to the officer the punishment of imprisonment, which was not applicable to him before?—That is very possible.

803. The change made in this Bill is, that it extends the punishment of imprisonment to officers who were previously only liable to be cashiered?—In some cases I am afraid it does; and I believe I can explain why it does; originally I put cashiering above imprisonment.

804. It includes cashiering, but it adds imprisonment?—Yes.

Mr. Hayter.

805. These clauses are headed differently from the old Articles of War, and much better, I think; here it is: "Every person subject to military law;" and in the Articles of War it is,

Mr. Hayter—continued.

"any soldier or officer"?—Yes; I have explained that already.

Chairman.

806. Is Clause 26 any variation from the existing law?—Clause 26 is the same, with a similar observation, I believe.

807. Is Clause 27 the same?—In Clause 27 I have put in the words "officially charged." I am not certain that I had authority to do it, and therefore if the Committee like I will strike them out. I was extremely pressed to put them in. At the present time servants of officers, who ought not to be entrusted with public money, are arraigned under this Article, and I was asked by the Deputy Judge Advocate (I must throw it upon him) to put in the words "officially charged," because embezzlement in the sense in which we use it means only the taking of money when you are in charge of it; and we thought that so severe a punishment as this of penal punishment ought not to be applied to a servant who, being improperly entrusted with public money, makes away with it or misappropriates it. But I am bound to say that I do not think I had sufficient authority to put in these words, "officially charged."

808. Without those words it would stand generally that any person subject to military law who embezzled public money should be liable to penal servitude?—Yes.

Mr. Campbell-Bannerman.

809. It says in the 80th Article of War: "Any officer or soldier, or other person employed in the War Department, or in any way concerned in the care or distribution of any money, provisions, forage, arms, ammunition, clothing," and so on?—Yes, there is the greatest possible difficulty in that Article. One set of lawyers explain it with the words "officially charged," which I think is the proper explanation of it, and in that Mr. O'Dowd agrees with me. Another set of lawyers consider that it applies to anybody who, so to speak, handles public money.

Mr. JAMES CORNELIUS O'DOWD, re-called; and further Examined.

Mr.  
O'Dowd.

Chairman.

810. HAVE you any remarks to make on this point?—Perhaps I may say that it was almost at my urgent request that Sir Henry Thring introduced those words; because, in the course of my reading of courts martial I found not a few but many cases in which the person who officially ought to disburse the money has been either above his business or not inclined to do it, and has given it to a person of inferior rank whose pay and position by no means represented the responsibility which the possession of that sum of money implied. For instance, the troop serjeant major of a cavalry regiment as pay serjeant of his troop has frequently given his servant a cheque for 30*l.* to go down the town to get gold for it, and we know what is likely to occur in such a case as that. Therefore I wish to put the responsibility upon the proper person.

811. (To Sir Henry Thring.) But in that case you would let off the man who had committed the crime, and you would not throw the responsibility upon the man through whose neglect it

Chairman—continued.

occurred; surely the proper way is not to let off the man who commits the moral offence, but to punish in some way the man who does not discharge his duty by properly looking after the moneys that are entrusted to him?—He is not let off; he is arraigned for stealing.

Mr. Campbell-Bannerman.

812. (To Mr. O'Dowd.) I understand that your intention is not that the words "officially charged" should include the servant, but that they should fasten the crime upon the troop serjeant who sends him, and who is responsible to the public for the money that he has?—To a certain extent, yes.

Chairman.

813. (To Sir Henry Thring.) You cannot fasten the crime upon him because he has committed no crime; he has committed an act of carelessness in allowing the other man to have the money?—I have not done it in that way, of course.

*Chairman*—continued.

course. Mr. O'Dowd has explained that if this man makes away with the money he is subject to penal servitude; but the servant who has been relieved from the punishment laid down in Clause 27 comes under the penalty laid down in Clause 23; he is tried for a crime of a felonious character and is subject to imprisonment. It takes it out of the penal servitude clauses.

*Mr. Campbell-Bannerman.*

814. But supposing that this clause was passed as it stands, "Every person subject to military law who, being officially charged with the care or distribution of any public money or articles for public use, steals or embezzles the same, or is concerned in or connives at the stealing or embezzlement thereof, shall be liable to suffer any punishment not exceeding penal servitude"; do you consider that that would include the troop serjeant in the case which has been mentioned? In my opinion, certainly not. Of course it is a matter of opinion whether he connives at the stealing. I simply give my servant money, and undoubtedly am not within the clause, but my servant is within Clause 23, if he is a soldier.

815. (To Mr. O'Dowd.) But it is not intended that this clause should fasten the crime upon the troop serjeant, because it does not seem to me to do it?—My idea was to remove a certain amount of the prospect of the punishment which the person who had no business to have the money might have before him. In fact, I wanted, if possible, to discountenance the bad practice which has arisen.

*General Shute.*

816. The fact is that the troop serjeant major himself had no business to have the 30l.?—No, the captain ought to have had it.

*Chairman.*

817. (To Sir Henry Thring.) How would that man be punished?—In the case which Mr. O'Dowd quotes, according to this scheme of a Bill, the servant who makes away with the money, instead of getting penal servitude under Clause 27, will be punished under Clause 23, because he has committed a crime of a felonious nature; but he has not committed a crime in respect to money with which he was officially charged.

818. Then we are obliged to fall back upon Clause 23, which we all agreed was a bad clause?—Yes, but we must substitute something for it.

819. Then, in point of fact, if the man was not officially charged with the money, you would punish him as if he had stolen any other money not being public money?—Certainly.

*Colonel Mure.*

820. It does not affect the serjeant major at all?—Not at all.

*Chairman.*

821. Is there any alteration in Clause 28?—Clause 28 is, I believe, exactly the same as the existing law.

822. Is Clause 29 the same as the existing law?—In Clause 29 the wording is the same in effect, but it is more general. "Being deficient" covers a number of particular words. The original words in the 102nd Article of War are, O.111.

*Chairman*—continued.

"Any soldier who shall pawn, sell, lose by neglect, make away with, or wilfully spoil, his arms, accoutrements, or necessaries."

823. But surely all those things involve something that a man does of his own act; now "being deficient" is a passive condition; supposing that somebody else took his arms, or ammunition, or accoutrements away, he would be deficient in them?—No doubt.

*The Judge Advocate General.*

824. In the 102nd Article of War the words are, "Loose by neglect," are they not?—I thought that the fairest and best way of putting all those words of Article 102 together was by using the words "being deficient," and "does not satisfactorily account for such deficiency."

*Chairman.*

825. (To Mr. O'Dowd.) This is a much more severe form; because whereas in the 102nd Article of War you would have to prove that he had pawned, sold, lost by neglect, or made away with those things, here you say, "being deficient, and not being able satisfactorily to account for such deficiency;" you, in point of fact, change the whole onus of proof with regard to the soldier; you treat the fact of his not having the things as *prima facie* evidence of his guilt, and you throw it upon him satisfactorily to account for it; whereas, as the Article of War stands at present, you have to show that he has done something?—In point of practice this is no additional severity, because a man is charged generally on two charges: first, with having made away with so many articles of his kit, and next with having lost them by neglect; and the court find him guilty of one or the other. The present practice is rather a blot upon the system, and I venture to say that Sir Henry Thring's form of charge will not involve any additional severity, and will certainly make the thing clearer and plainer for us in administration.

*The Judge Advocate General.*

826. When a soldier is found deficient in these articles, he has to account for them, has he not?—Generally, in the case of a man who deserts, or who is absent without leave, the serjeant says: "I called the roll; he was not present; I examined his kit, and I found the following articles deficient"; and when the man is tried, you bring two charges against him, one of having made away with certain articles of his kit, and the other of having lost, by neglect, the same articles.

827. We are always obliged to repeat the charges?—Yes; in former days the charge used to run, "having made away with, or lost by neglect"; and certain officers of the Judge Advocate General's department thought it was a bad charge as being an alternative. The consequence was that, in those cases, they make both charges without the least inquiry as to whether the man makes away with the things, or loses them; and I am sorry to tell you that now and then a court martial finds a man guilty of both making away with things and losing them. I have had a court martial this year, in Dublin, where the same court did that twice within a week. I consider that Sir Henry Thring's change would be a very advantageous one.

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828. That

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828. That is to say, it would legalise the irregularities of which you complain?—It would leave the thing as it stands now.

829. It might be very satisfactory to the Judge Advocate General's office, but I do not know why it should be satisfactory to the soldier?—It is a thing that you need not try a man for at all. A man is bound to have those things, and if the captain says, "Where is your tunic?" (taking that as a prominent article of military attire) and the man says, "I don't know, sir," then he is made to replace it; so that what the court martial does is very little more than the officer of his company can do.

Colonel Mure.

830. In the case of a man not having a tunic, would you go so far as to say that if there was no evidence to show that the man had made away with his tunic fraudulently, he was not to be found guilty of any other crime than of having accidentally lost it?—I do not think you quite apprehend my argument, or else I do not quite understand your question.

831. According to your contention, the result would be this: a man has lost his tunic; we all know very well a man could not very well lose a large massive article like a tunic; but, if the court martial could not get evidence to show that he had made away with that tunic fraudulently, the man would get off by saying that he had lost his tunic?—If you put that question as a matter of practice, I must say no to it.

832. The onus would rest upon the court to prove that that man had made away with his tunic fraudulently?—What I am contending for is, that the court finds him guilty of making away with it, without any evidence that he did make away with it.

833. Is it not quite right that the court should have power to say, "He not having that tunic, there is *prima facie* evidence of a constructive character which makes us believe that he has made away with that tunic fraudulently"?—What I am really driving at is to abolish the double charge, if possible. At present we have two charges in every case, speaking generally, and it is rather offensive to the eye to see two charges; sometimes with an immense lot of articles repeated (a cavalry soldier has any number of things in his kit), when a man has only committed one offence, and the offence is simply deficiency.

General Shute.

834. Is not the usual form "Having made away with, or lost by neglect"?—No, that was considered to be an illegal form, because it disclosed two offences of a different kind. It was held that "making away with" was one species of offence, and that "losing by neglect" was another species of offence. There is never any proof given that a man has lost certain articles by neglect. The present practice is, that you prove nothing against the man, except that he has not got the thing. In the majority of instances, when a man deserts, or goes away, his comrades in the room know pretty well that he is gone away, and they help themselves, and he says, "I have left my kit complete," and perhaps with perfect truth.

Chairman.

835. (To Sir Henry Thring.) I see that you have treated the case of a man losing his horse in a more favourable way, because you have left out the words as to selling, or losing his horse by neglect, which are in the 102nd Article of War?—That is true; I will make a note of that.

836. Is there any alteration of the existing law in Clause 30?—Clause 30 is only a proposal to shorten the law.

837. Is there any alteration in Clause 31?—There again, "knowingly utters" is substituted for a variety of words, but I do not think there is any substantial alteration in it; it is simply shortened.

838. The 84th Article of War says: "Or shall make a return or report to us knowing such return or report to be false;" that, I suppose, would be included in Sub-section 1 of Clause 31?—Yes, I think so; but it is difficult to say off-hand. I compared them some time ago.

Colonel Mure.

839. There is no intentional alteration?—There is no intentional alteration, at any rate.

Sir Alexander Gordon.

840. I think that Sub-section 4, as to signing any official document in blank, is not in the present Articles of War?—The 90th Article of War says: "Any officer who shall have signed certificates, returns, or forms of accounts in blank;" it may be a very bad term for aught I know, but it is used.

Chairman.

841. Is there any alteration from the present law in Clause 32, which is as to offences in relation to billeting?—No; Clauses 32 and 33 are not substantially altered, or are not intended to be altered.

Sir Alexander Gordon.

842. As I read your Bill, this Clause 32 refers to the Channel Islands?—The billeting refers to the Channel Islands also, I think, but I cannot answer off-hand. Of course, if they do not billet they cannot commit the offence.

843. Under the existing Act it does not apply, but under the proposed Act it does apply?—I cannot answer the question off-hand; but it is not material. You cannot commit an offence in respect of billeting in a place where you cannot billet. I have extracted the offences in relation to billeting, and whether it applies to the Channel Islands or not is immaterial.

Chairman.

844. It excludes billeting in the Channel Islands, does it not?—Yes, but I have not done any injustice. I will put that it shall not apply to the Channel Islands, if you think fit, but it is perfectly unnecessary. The clause as to billeting will not be extended to the Channel Islands, but that will be in the Army Regulation Act, and not in this Bill. According to the new scheme I put it into this Bill.

Mr. Campbell-Bannerman.

845. Does Section 3 of the Mutiny Act restrict billeting in the Channel Islands; because if so, that of course ought to be repeated somewhere?—Of course it must be repeated; and I shall

Mr. Campbell-Bannerman—continued.

shall make the greatest possible blunder if I do not repeat it in the billeting clauses.

Chairman.

846. Are these offences in relation to billeting offences which now exist in the Articles of War?—Yes, and some of the offences in relation to the movement of troops; and the same with respect to Clause 34, as to the offences in relation to attestation. Then we come to Clause 35, which I have already explained, which is the new Fraudulent Enlistment Clause.

847. I see that you have made persons who fraudulently enlist subject to penal servitude for the second offence; this is new, I suppose, in principle, because this is an offence which has hitherto been treated as desertion?—Certainly. This clause was one of the clauses which was very carefully considered by the military authorities on the memorandum which I sent to the War Office, and they agreed that I should submit it to the Committee in this form. They were quite satisfied if we made penal servitude the punishment for the second offence; and they thought it would be an improvement upon the existing law.

848. Then the operation of this clause would be that, if a man being in one regiment left that regiment and enlisted in another, for the first offence he would be punished with imprisonment, and if he did it a second time he would be punishable with penal servitude?—Certainly. Officers tell me that it is an offence which they are very much troubled with, and which most robs the nation, and which is most injurious to the service.

Mr. Campbell-Bannerman.

849. Has the punishment of penal servitude been affixed to anything similar before?—Technically they may shoot them, because technically they may be tried for desertion.

850. But, practically, no deserter, however hardened an offender he may be, gets anything like penal servitude, does he?—I do not know what they do for fraudulent enlistment.

Chairman.

851. You intend that the punishment shall not exceed imprisonment for the first offence for which a man is tried?—Yes, because it has always been considered in all criminal law that a man is only guilty of the offence of which he is proved to be guilty. You might try him for offence No. 1, and then give him imprisonment; and then you might try him for offence No. 2, and give him penal servitude.

Mr. Merewether.

852. It depends upon the Act of Parliament, and the Act of Parliament insists upon the offence being a bad act after a previous conviction; therefore the act must be done after the previous conviction?—Yes.

Colonel Mure.

853. Take the case of a man who deserts from one regiment; he goes through a course of re-enlistment, and it seems to me that that course of re-enlistment is one great crime, and not that the last case of all is one little crime for which he is to be imprisoned; the first offence which he

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commits is a sort of capital offence which includes many others, that first offence being the leaving of a regiment for the purpose of fraudulent enlistment; if he has done that eight or nine times is it just that for the last item of this huge offence he is only to suffer a year's imprisonment?—I will so alter it as to make it clear. I will admit that I think I am wrong in putting the word "offence" in the sense in which the Committee appear to take it; but I presume that you intend that all these offences must be proved against the man.

Sir Alexander Gordon.

854. Would not the use of the word "conviction," instead of the word "offence," meet the difficulty?—I think I must take care that, if a man is proved to have deserted and fraudulently re-enlisted several times, it should constitute one crime, and that the man should be liable to penal servitude.

The Judge Advocate General.

855. I am advised by the military authorities that they consider that this professional deserter who enlists from regiment to regiment is really a much worse offender than the man who only deserts altogether once without the *animus revertendi*; and consequently it seems very hard that the man who deserts once for the purpose of entering civil employment should get penal servitude, and that this habitual deserter should be only sentenced to two years' imprisonment?—I think so too. I think it is a blunder of mine.

Mr. Parnell.

856. How do you propose to prove that a man has deserted twice unless you try him for each desertion?—You have it given in evidence that he has deserted twice or three times, and you have each case of desertion proved.

857. But how is the court to express its opinion that the proof was sufficient?—In the same way, I presume, as they do in the case of other offences charged against a man.

Mr. Hayter.

858. In Article 49, any number of charges of desertion may form the subject of a single arraignment?—That is quite so. You may charge a man with three or four or five, or any number of acts of theft. Of course you may, if you like, have each of them proved against him, and the court will give an opinion whether each is proved.

859. I assume, then, that you propose that the court should have the power of awarding penal servitude if they consider that more than one charge of desertion has been established?—That I understand to be the wish of the Committee.

Chairman.

860. In Clause 36 is there any deviation from the existing law?—No, it is exactly the same,

861. It seems a very extraordinary general recital, because you say, "Every person subject to military law who wilfully acts in a manner contrary to law in any matter relating to the enlistment or attesting of recruits, or in any manner contrary to law not specified in this Act;" that

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that seems as if it was a general clause for the punishment of every possible offence?—I see what you mean; it wants correction; it is "this Act," it is not the "Enlistment Act."

862. What is the object of the clause?—It is either a sweeping clause or a sweeping article relating to enlistment. There is an almost endless quantity of provisions, partly in the Mutiny Act and partly in the Enlistment Act, and then there is a sweeping clause that if anybody does anything contrary to this Act it shall be punished in this way; but this Act will not adopt itself properly here, and I have made a mistake, I suspect.

863. In Clause 34 there is a specific penalty with reference to attestations and enlistments, and then there comes this general clause under which I think anybody might be charged with anything: "in any manner not specified by law contrary to this Act"?—It is too wide. I believe that if you went through the whole of it there are all manner of minute regulations.

864. But those words do not appear either in the Articles of War or in the Mutiny Act?—No, those words, "not specified in this Act," were put in because I put in certain enlistment offences here.

865. It seems to me that this clause is unnecessary?—I believe the clause to be absolutely unnecessary myself. I should hope that the Committee would allow me to erase that and the next also.

*Sir Alexander Gordon.*

866. With reference to Clause 37, the War Office have the power to discharge a chaplain, have they not?—Yes; I propose to strike out Clauses 36 and 37; they are of no use.

*Chairman.*

867. Is there any variation from the existing law in Clause 38?—I believe there is no alteration at all in Clause 38, or in Clauses 39 and 40.

868. (To Mr. Clode.) With regard to Clause 39, it seems to me to be rather a strong thing that a man who fights a duel should be liable to suffer punishment not exceeding imprisonment; can you give the Committee any information as to that?—The Article against duelling was first put in in 1717; it was re-introduced in 1844 at the instance of the late Prince Consort, and it was remodelled in 1862.

*Sir Alexander Gordon.*

869. (To Sir Henry Thring.) But an officer is not liable to imprisonment for fighting a duel?—No, it is the same cashiering question throughout.

*Mr. Staveley Hill.*

870. Have you any provision in this Bill for the trying by a military court of offences otherwise punishable by the civil law, where the soldiers are removed from the jurisdiction of the civil courts?—Yes, I was going to point that out. It is a very difficult question, and I hope that the Committee will consider it; but I have got a clause purposely drawn with that very object.

*Colonel Mure.*

871. I see you have left out the words "shall not do his best to prevent a duel"?—Yes, I

*Colonel Mure*—continued.

thought that was absurd. I think that the term "conniving at" is strong enough.

*Colonel Loyd Lindsay.*

872. You might have an army of occupation in a country where duelling was legal, where it would be important to have this clause existing?—Duelling is never legal in the British Army, wherever it may be.

873. But you could not rely entirely upon the civil branch of the law to deal with it; and you must have it in the military code?—Yes.

*Chairman.*

874. Is Clause 40 in any way altered from the existing law?—Clause 40 is not substantially altered.

875. Is Clause 41 altered?—It is not altered at all.

876. (To Mr. O'Dowd.) Is it the fact that sometimes this clause is used for the punishment of offences which might be dealt with separately under other clauses?—Yes, I think it is; and I think it is sometimes abused, more particularly with regard to one particular offence, which is not specified in the present Articles of War, but which I should be very glad if the Committee would specify in the new Act. That is with reference to making complaints. I have known cases where I have no hesitation in saying that gross illegality and injustice have occurred by reason of a man being indicted or arraigned for conduct to the prejudice of good order and military discipline in making a complaint which was just, and the justice of which was not in dispute, and yet, for doing what was, according to the Queen's regulations, a perfectly legitimate and proper thing, the man has received a very large term of imprisonment. With the view to avoiding any such injustice in the future, I venture to suggest to the Committee that they should put in the category of offences punishable with imprisonment the making of a frivolous and vexatious complaint; because if a man makes a frivolous and vexatious complaint I see no reason why he should not suffer a certain punishment.

877. You think that would prevent a man being treated under this general article?—I think so, with the restriction that this 41st section of the Act should contain a limitation to the effect that no person should be tried under it except for an offence not otherwise specified in the Act, so that it should be entirely supplementary.

878. So that it should not be used as a substitute?—Not as a substitute in any sense.

*Sir Alexander Gordon.*

879. In the case which you have mentioned, is the statement that the complaint was perfectly just a statement of your own opinion, or is it the opinion of the military authorities who ordered the trial and confirmed the sentence of the court-martial?—I have two or three cases in my mind. In one instance the military authorities on the spot who ordered and confirmed the trial must undoubtedly have considered that the complaint was something in the nature of a military offence.

880. Did they consider that it was frivolous?—I cannot say that; but when the case came home the Judge Advocate General, Mr. Cave, his

*Sir Alexander Gordon*—continued.

his Royal Highness the Duke of Cambridge, the Adjutant General, and, I think, everybody who had anything to say to it, considered that there was not an atom of ground for the local authorities entertaining the opinion which they did, and punishing that man.

881. Did the Commander in Chief then express his opinion with regard to visiting with punishment the officers who had so grossly misbehaved?—He expressed his displeasure.

*Colonel Mure.*

882. You still leave it open to a court martial to decide whether a complaint is frivolous or vexatious?—Yes, you try a man for making a frivolous and vexatious complaint, and in order to prove that it is necessary for the prosecutor to show that the complaint was frivolous and vexatious. Therefore, I suggest that you should put in an offence of that description.

883. Hitherto, when a man is tried for making a complaint, before he can be convicted of the offence, must not the prosecutor prove that that complaint has been an improper complaint; no doubt courts martial may have inflicted injustice by having considered a complaint frivolous and vexatious when it was not so, but what we want here is to provide that soldiers may, without punishment, make proper complaints; have they not hitherto been able to do so?—In two cases that have come to my knowledge the complaint was just, and there was no attempt made to show that it was not just.

884. Then what was the man punished for?—For making a complaint. I can get you the proceedings of the court martial. I have kept them by me rather as curiosities; they are not common, I am happy to say.

885. Was this man merely punished for making a complaint; or, when the proceeding of the court martial appeared, did not the court martial state that the complaint had some character of frivolousness or vexatiousness?—To the best of my recollection there was nothing about the complaint being frivolous; it was merely for making the complaint that the man was punished.

886. Is there any necessity, and, if so, is there not great inexpediency, in punishing a man for making a complaint; after all, the proper remedy for a man against whom an unfounded complaint is made is to pay no attention to it; if a man is to be tried for making a complaint, you really shut the door against justice?—You will find, if you look back to the evidence before the Courts Martial Commission, Major Hale, of the Engineers, I think, gave evidence, and said that one of his men was brought before a court martial for making a frivolous and vexatious complaint. Major Hale knew perfectly well of his own knowledge that the man's complaint, instead of being frivolous and vexatious, was a just complaint, and to his utter astonishment the man pleaded guilty. He said, "What do you mean by pleading guilty." The man said, "I was tried for making a complaint, and, of course, I made a complaint"; he took no notice of the word "frivolous"; he did not understand it.

887. You may reprimand a man for being troublesome, but is there any foundation in sense or justice for trying a man by court martial for making a complaint, even if it is frivolous?—The  
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*Colonel Mure*—continued.

complaint is supposed to imply a false accusation against his commanding officer. I am afraid that if you do not mention frivolous and vexatious complaint as a specific offence we shall continue to have complaints, whether frivolous, or vexatious, or just, still made the subject of trial under what corresponds with the 105th Article of War, by which the man is charged with "conduct to the prejudice of good order and military discipline."

*Colonel Mure.*

888. Could you not do the same by adding a saving clause, that a man might make a complaint unless it could be shown to be mutinous or in the nature of a false accusation?—I should think that unless there is some element of bad faith distinctly shown, the man has a perfect right to make a complaint. Under the present law the court does not take the trouble to say whether it is frivolous or vexatious or not. A false accusation may be made in very good faith, though it may turn out to be untrue.

*Major O'Beirne.*

889. It will always lie with the court martial to prove whether the complaint is frivolous and vexatious, will it not?—At present they do not prove anything.

*Chairman.*

890. There is a punishment given by the Articles of War for making a frivolous complaint, is there not?—Yes, but that is a curious process and it is entirely unused. A man makes a complaint and then you may call a small court martial, and then a general court martial; and then, if the general court martial finds that the man's complaint was unfounded you may punish him; but you do not know what the man's position is before the court; whether he is a prisoner or a plaintiff, or a defendant, or what.

*Sir Alexander Gordon.*

891. You will find cases in your own office where this Article has been used?—I tried to find them out but could not.

*Colonel Mure.*

892. I believe that many soldiers labour under a sense of injustice, supposing that the making of complaints is a crime; do you not think you could find some better way of protecting the soldier by which he could be encouraged to make proper complaints, and at the same time discouraged from making complaints which are mutinous or accusative of his commanding officer?—It is an improvement, I think, in this way, that you will have to prove that the complaint is frivolous and vexatious, whereas now you have to prove nothing of the kind.

*Colonel Loyd Lindsay.*

893. You propose that Clause 41 is not to be used when any other clause in the Bill is sufficient for the purpose?—Yes, quite so. Last year a man got 336 days' imprisonment in an Indian prison for making a complaint for asking his commanding officer to forward a most respectfully worded letter, to the best of my recollection, to the Commander in Chief in India. He was brought up and tried for making that complaint; it was not a frivolous complaint, at  
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least the prosecution never tried to show that it was frivolous. The man was tried by officers of his own regiment, and he got 336 days' imprisonment.

Chairman.

894. (To Sir Henry Thring.) Do you wish to say anything with regard to offences punishable by the civil law?—An honourable Member asked me about offences punishable by civil law. An alteration has been made here. It was found extremely difficult, in out-of-the-way places in India, for instance, or out-of-the-way parts of the Dominion of Canada, to punish murder, manslaughter, and rape. The effect of these two clauses, 42 and 43, is the same as the existing law, with this material exception, that it enables a court martial to try murder, or manslaughter, or rape, in places not in the United Kingdom, and at a distance of more than 100 miles from a city or town in which a court of civil judicature is established. That is the proposal. You must take Clause 52 and Clause 43 together. Clause 42 gives a substantive power to try murder, manslaughter, and rape.

895. But what do these words in the beginning of the clause mean: "Subject to the restrictions in this Act mentioned"?—That refers to the restriction in Clause 43, which says that, "A person subject to military law shall not be tried by court martial for murder, manslaughter, or rape, in the United Kingdom, or in any place within Her Majesty's dominions beyond the seas, if such place is within a distance of 100 miles from the city or town which is the seat of any court of civil judicature established by the authority or appointment of the Crown, and competent to try the offender." Of course I must admit that 100 miles is a mere rule of thumb.

Sir Alexander Gordon.

896. One hundred and twenty miles is the existing limit, is it not?—I think that 120 miles is the existing limit in India, and that was done for some old reason.

Chairman.

897. Where do these limits appear?—In the 145th Article of War.

898. How do these two clauses differ from the existing law?—Most materially. They apply to places generally out of the United Kingdom and in Her Majesty's dominions, a certain portion of the law which formerly only applied to India. In other words, you may try by court-martial those particular offences of murder, manslaughter, and rape, if you are in a place beyond the United Kingdom within Her Majesty's dominions, and if there is not within 100 miles of the place where the crime is committed, any court competent to try it.

899. Then it would apply to Australia or to the Cape of Good Hope?—Yes, it is intended to do so. It is to remove a difficulty which arises beyond the boundaries of the inhabited parts of Australia, or in fact in any of our very large colonial dominions, as, for instance, in the Cape beyond the boundaries of the Cape Colony proper. But 100 miles is, as I say, a mere rule of thumb. It was 120 miles in India, and that was put in on account of some particular place or for some temporary reason which does not apply now.

Sir Alexander Gordon.

900. They can be brought into a presidency town if it is within 120 miles?—Yes.

901. Does the existing law apply to the Colonies as well as to India?—I think it only applies to India.

Chairman.

902. The extraordinary part of it is that it applies to India except Prince of Wales' Island, Singapore, and Malacca?—Yes, they were under the Indian Government in those days, but they are not now.

Sir Alexander Gordon.

903. Therefore you propose to apply to all the Colonies the law, as it now exists, with regard to India?—I do; so that whenever our troops are so placed that they cannot bring the civil power to bear on an offence of this kind, supposing, for instance, that somewhere in the dominion of Canada a man committed murder, he might be tried by court martial.

Mr. Staveley Hill.

904. Would 100 miles be about a satisfactory instance to put as a limit?—That is a question; but they need not try him unless they like.

Colonel Mure.

905. With regard to Sub-section 3 of Clause 42, in no cases under this Act can the crime of rape be punished by death?—He could not be punished by death; under the earlier part of the Act he can be shot for doing violence to a friendly inhabitant.

Chairman.

906. Suppose you take the city by storm, the inhabitants are not friendly?—The inhabitants are friendly.

907. Does the Provost Marshal Clause cover it?—That will hang him at once.

Major O'Beirne.

908. In one of those commissions which inquired into the system of courts-martial, was it not recommended that a non-commissioned officer should be reduced to a lower grade, and not absolutely to the ranks?—I believe it was; but this section is only with respect to civil offence; it has nothing to do with the general question of reduction of ranks. It is that where a soldier commits a civil offence and has been punished, you shall not punish him civilly over again; you may punish him militarily by reduction to the ranks, but this has nothing to do with the general question of whether they shall be reduced to the ranks or to a lower grade. This is the existing law: If a man commits a disgraceful civil offence he ought not be retained in the army in the same position.

Mr. Parnell.

909. How is that a person who has been tried and punished by court martial for an offence can afterwards be tried and punished by a court of civil judicature for the same offence?—That is so now; in fact, if I recollect rightly, the civil courts have been so excessively jealous of the military authority that they would not allow an acquittal; this is an alleviation of the existing law. At the present moment, the civil courts will not consider a court martial punishment at all.

910. If

Mr. Parnell—continued.

910. If you give a direction to the court which is not within this Act, in awarding punishment, to have regard to the military punishment which the criminal may already have undergone, surely you can go further and say that the court shall not punish at all?—Of course I do not say that an Act of Parliament cannot do anything, but it is contrary to the law of England. The law of England has always asserted that a soldier is subject to the civil law, and the same if he is not a soldier. The law of England will never allow a man to be taken out of the civil courts by a military authority; that is the great question of English law.

911. But it appears to me that you do not trench upon the authority of the civil court by directing it to have regard in its sentence to the

Mr. Parnell—continued.

punishment inflicted by the other court?—No doubt that is so to some extent; an Act of Parliament can do anything, but the whole object of the law of England is exactly the contrary; that a soldier shall not be exempt from civil law because he is a soldier. It was thought that we might put in a statutory direction that the civil court should have regard to the punishment that he may have had. It is not obligatory, it is merely a direction; and you would go far beyond anything that has ever been entertained in the English law if you put in a clause declaring that because a man had been tried by a military tribunal he should not be tried for the same offence by the ordinary tribunal if he was triable by it.

Mr.  
O'Dowd.  
25 June  
1878.

*Friday, 28th June 1878.*

MEMBERS PRESENT:

Mr. Campbell-Bannerman.  
Admiral Egerton.  
Sir Alexander Gordon.  
Sir William Vernon Harcourt.  
Sir Henry Havelock.  
Mr. Hayter.  
Mr. Herschell.  
Mr. Staveley Hill.

Viscount Hinchinbrook.  
The Judge Advocate General.  
Colonel Loyd Lindsay.  
Mr. Merewether.  
Colonel Mure.  
Major O'Beirne.  
Mr. Parnell.  
General Shute.

SIR WILLIAM GEORGE GRANVILLE VERNON HARCOURT, Q.C.,  
IN THE CHAIR.

Sir HENRY THRING, K.C.B., re-called; and further Examined.

Sir  
*H. Thring,*  
K.C.B.  
28 June  
1878.

*Chairman.*

912. WHY have the words about the Secretary of State for War, in the 12th Article of War, been left out in the 44th clause of the Bill?—It is a mistake of mine; it is not intended; but it is quite immaterial.

913. You did not intend to alter the 44th clause?—Not in the least. I rather think that

*Chairman—continued.*

it is a modern introduction, and that I copied a former article.

*Sir Alexander Gordon.*

914. Are you aware that it is 200 years old?—Then I have made a mistake.

Mr. JAMES CORNELIUS O'DOWD, re-called; and further Examined.

Mr.  
*O'Dowd.*

*Chairman.*

915. THE Committee would like to have some further explanation from you with reference to a case to which you referred in your evidence at the last sitting of the Committee, in answer to Question No. 893?—The answer is, I think, an accurate answer, except that, I believe, I made a mistake in saying that it was last year that the case arose; it may not have been last year; but otherwise the answer is accurate. If the Committee wish, I can get them the proceedings in half-an-hour. I referred to cases that I had been reading. I had in my mind two very prominent cases, in which it appeared to me that the 105th Article of War was made the means of considerable abuse. One case that I men-

*Chairman—continued.*

tioned occurred in India. We do not read in our office the proceedings of Indian courts martial, but a friend of the prisoner's wrote, and asked about it, and my attention was called to it in that way. The other case which I had in my mind, was the case of a gunner, named Jures, in the Royal Artillery at St. Helena. He got 168 days for what appeared to be admittedly a substantial complaint.

*Mr. Staveley Hill.*

916. Is that the case to which you referred?—I only referred to two cases. If the Committee like, I can get the proceedings of that case also.

Sir HENRY THRING, K.C.B., re-called; and further Examined.

Sir  
*H. Thring,*  
K.C.B.

*Chairman.*

917. CLAUSE 46 is an important clause, and I should be glad if you would give an explanation to the Committee of the principle upon which you have proceeded in this clause, and of the manner in which it differs from the existing arrangements with reference to punishments?—This scale of punishments was intended practically to agree with the scale of punishments under the existing law; and I believe that, taking it as a whole, it does practically agree with those punishments. There is, certainly, a difference with respect to the punishment of officers, which

*Chairman—continued.*

the Committee will have to consider, because I have put imprisonment above cashiering, which apparently makes an officer subject to imprisonment in a great many more cases than he is now. I should most respectfully submit to the Committee upon that point by-and-bye, that where the offence is felonious or disgraceful, the officer ought to be subject to imprisonment; but I repeat that Clause 46 was intended to accommodate itself practically to the existing law. Theoretically, of course, it differs in this sense; that, as I have already stated, the punishments under the Mutiny

*Chairman*—continued.

Mutiny Act and the Articles of War, so far as they are graduated at all, and so far as they are not specifically mentioned, are graduated, as far as I can judge, by declaring the court martial which is to try the case; it being assumed, practically, that the greater court martial usually gives the greater punishment, and the lesser court martial the lesser punishment. In other words, as a general rule, if you send a soldier before a general court martial, he gets a greater punishment than he gets before a district court martial, and he gets a greater punishment before a district court martial than he gets before a regimental court martial. Of course, if the maximum punishment is given, he necessarily gets the greater punishment, because the jurisdiction of courts martial is graduated practically by the degree of punishment that they can inflict. That being so, the habit has arisen of the greater courts martial giving the greater punishments. I have adopted the plan which I adopted many years ago in the Naval Discipline Bill; it was necessary to graduate offences in some way, and so I have endeavoured to graduate them by the maximum of punishment. With respect to the details of this clause, I am not aware that I have practically deviated from existing details, though in drawing a clause of this sort, where you have to deal with a great number of punishments, and to cover a great quantity of ground, I am not prepared to say that I may not have made mistakes; but the principle was intended to be a graduation by punishment instead of a graduation by court martial, it being assumed that the graduation by punishment and the graduation by court martial were, for practical purposes, very nearly the same.

*Mr. Campbell-Bannerman*.

918. In the second sub-proviso to Section 46, you say: "Where a punishment not exceeding imprisonment is mentioned in this Act in respect of an offence, there may be awarded for such

*Mr. Campbell-Bannerman*—continued.

offence imprisonment or any one or more of the punishments lower in the scale in place of imprisonment;" and we have also the expression, "A punishment not exceeding cashiering;" of course the same principles apply there?—Yes.

919. That of course would equally include punishment of any degree?—Cashiering comes next to imprisonment; and therefore wherever they can give imprisonment, they may give instead of imprisonment the punishments specified in Sub-provisoes 4, 5, 6, or 7, or any of them.

920. What struck me was that you have a separate sub-proviso to explain what is meant by "a punishment not exceeding imprisonment," and you have none to explain what is meant by "a punishment not exceeding cashiering," which is of course the same thing, only going a step higher?—Does not Sub-section 1 explain that sufficiently: "Provided that a punishment higher in the scale shall be deemed greater than a punishment lower in the scale."

921. Then is there any necessity for Sub-proviso 2?—The object of Sub-section 2 is this: that they very often want to give two punishments. For instance, take the case of a soldier who is punished; they will reduce a man to the ranks and fine him. Now they may give two or three other punishments lower in the scale than imprisonment; and that is the object of Sub-proviso 2.

*Chairman*.

922. What is the difference between "cashiering" in No. 4, and "dismissal from Her Majesty's Service" in No. 5?—I really do not know, but I know that there is a difference; they are considered different stages of disgrace.

*Mr. Staveley Hill*.

923. Could there be a distinction in regard to pension between cashiering and dismissal from the service?—I do not know. I fancy that the difference is that one is public and the other private.

Colonel J. H. ROCKE, re-called; and further Examined.

*Chairman*.

924. CAN you give us any information on this point?—Cashiering is a more serious punishment than dismissal.

925. In what respect?—It is a tradition I fancy now. The old tradition was that a sword was supposed to be broken over an officer's head when he was cashiered; in fact the very word "cashiering" would almost show that, from the word "*casser*" referring to the broken sword; but it is a mere expression.

*Mr. Hayter*.

926. Since the abolition of purchase, is there any necessity for keeping up the two terms?—I am not prepared to say whether cashiering would not make it utterly impossible for an officer to hold any other appointment in Her Majesty's service; whereas on dismissal he might possibly do so. (Sir Henry Thring.) Cashiering is a public disgrace, and dismissal is a private disgrace.

*Mr. Merewether*.

927. (To Sir Henry Thring.) To carry out your principal you must add in the last line of 0.111.

*Mr. Merewether*—continued.

Sub-proviso 2, the words "in addition to or in place of imprisonment," must you not?—I think so.

*General Shute*.

928. You know that you must reduce a non-commissioned officer before you can imprison him?—That is only a practice or regulation. (Colonel Roche.) It is only an unvariable practice; there is no law at all making it necessary to reduce a non-commissioned officer to the ranks before imprisoning him.

*Colonel Loyd Lindsay*.

929. (To Sir Henry Thring.) A very great deal was said in the House of Commons about the punishment of solitary confinement; that is not included in your punishment, is it?—It is not included because it has been entirely abolished, in the United Kingdom at all events. They always give separate confinement, which means an entirely different thing. They are kept separate during the day and during the night, in the sense of not being able to communicate with each

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each other; but they are not kept in solitary confinement, which means that they are to be by themselves without anyone near them. It has been found that it drove men mad and was very injurious; and it is entirely abolished throughout all our civil prisons.

Chairman.

930. Clause 47 is as to penal forfeitures and stoppages; what have you to say to that clause?—With respect to penal forfeitures and stoppages, I will explain fully to the Committee what they are, and I will also hand in memoranda explaining what they are, and also a Minute Appendix showing them in detail. I think it is right that the Committee should see that very considerable attention has been paid to the question. Apart from all other punishment, so to speak, a soldier is subject to being deprived of certain advantages by misconduct; and those are what soldiers, I believe, call penal forfeitures, and stoppages. With respect to penal forfeitures, the first and the great forfeiture is that of service. As the Committee know, a soldier is now enlisted for a certain number of years; the general enlistment now, I believe, is for six years for the Army Service and six years for the Reserve Service. Forfeiture of service means that supposing that he is imprisoned for one year of that six years, instead of at the end of six years going into the Army Reserve, he has to serve another year in the Army; in other words, whenever he is imprisoned he has that term added to his Army Service. That is called "forfeiture of service towards limited engagement." There is also "forfeiture of service towards pension," which explains itself. It means that when men are entitled to a pension, if they commit certain military crimes, they forfeit service; for instance, instead of having ten years' pension, they are only to have nine years. Then there comes forfeiture of ordinary pay, which explains itself; when a man is put in prison and does not do his duty he forfeits his pay. Then forfeiture of good conduct pay and gratuities is another thing; a soldier, after a certain number of years of good conduct, is entitled to a badge, to good conduct pay, and to some other advantages, which are forfeited for certain kinds of misconduct. Forfeiture of military decorations and rewards explains itself; it means that a soldier forfeits his medals if he is guilty of certain offences. All these matters are of very great importance to the soldier, and I suppose it will occur at once to the Committee that they are of the most importance to the good soldier, and therefore they require to be carefully regulated. If the Committee will be kind enough to look at the comparative heads of the provisions of the Mutiny Act and of the Articles of War, at page 20 of a Paper which I gave them at first, headed "Analysis of Mutiny Act and Articles of War," they will find that the provisions relating to the forfeiture of pay, service, and medals and so on, extend over three or four pages of that document, and I believe that, practically, they are much more extensive. In short they are regulated at the present moment in the first place by the Mutiny Act, next by the Articles of War, next by the Queen's Regulations, next by the Queen's Warrant, and lastly, sometimes, by Army Circulars. I thought it my duty to go over the whole of the subject. I submitted to

Chairman—continued.

the War Office that it was advisable that the regulations relating to general forfeitures should all be in one place, and that they should be reconsidered to meet the new exigencies of the service. The clause which I have submitted to the Committee with the consent of the War Office, but which has not been settled, is simply this: that forfeiture of service must be regulated by Act of Parliament, because it is one of the conditions upon which the soldier is enlisted; he is enlisted on condition that if he commits certain crimes he is to serve so much longer. With respect to all the other forfeitures, I have submitted to the War Office that it would be very much better to exclude them from the Act of Parliament, and to put them either in the Articles of War or in the Queen's Regulations, because, of course, inasmuch as those gratuities are boons, and are always given by Her Majesty's Warrant, there cannot be any reason whatever why they should not always be taken away by warrant, or some other document emanating from the Crown. Therefore, the form in which I have put the clause is simply this: "Forfeiture of service shall take place, in manner for the time being directed, by Act of Parliament." (That is of course simply declaratory; it is really under the Enlistment Act.) "Forfeiture of any pay, good conduct pay, good conduct money, good conduct service, or military decoration or reward, shall take place, either absolutely or in the discretion of a court martial or competent military authority in respect of such offences, and in such manner as may be directed by any Warrant, Regulation, or Article of War of Her Majesty for the time being in force." I was allowed to submit it to the Committee in that form. It appeared to me extremely unadvisable to make these forfeitures absolutely consequential on the commission of crime as they sometimes are; very great hardship sometimes arises from it. A soldier, for instance, takes an apple; of course, if he is tried for stealing an apple, we know every now and then there are cantankerous magistrates, and silly magistrates, and they will commit a man for a felonious crime, which is really no crime at all. I do not mean to say that a man ought to steal an apple, but he does not at the moment consider that he is committing any crime. There is this great difficulty: that although the crime is of the most trivial possible nature, this unfortunate fellow has, perhaps, had to forfeit the fruits of 20 years' good service. It occurred to me that these forfeitures ought never to be made consequential, but that somebody ought to consider whether they ought to apply or not; and further, that there ought to be always a power in some authority or other to restore these forfeitures if the man was gallant and behaved well. That is the whole form of the clause that I have submitted to the Committee. The last part of the clause is, that "It shall be the duty of a court martial, in passing sentence in respect of any offence for which a forfeiture is incurred, to make mention of any forfeiture so incurred; nevertheless the sentence of a court martial shall not be invalid by reason of the omission of such court to make mention in pursuance of this section of any forfeiture incurred." That, again, I was allowed to submit in that form. It seemed to me to be extremely desirable that when a court martial or any court passed sentence it should know what it was inflicting on the prisoner. When a  
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*Chairman*—continued.

man is tried the court martial, owing to the great difficulty of really ascertaining these forfeitures, does not always know that when it passes a particular sentence it deprives the man of the fruits of his whole life, for that is really what it amounts to; and therefore I am desirous that it should be called to their attention; but I have declared that it should not make their sentence invalid, because that might be extremely inconvenient.

931. I do not quite understand how it is that, from your point of view, this question of forfeitures finds its place in this penal statute at all?—It ought never to have found its place there at all.

932. Is it necessary that it should be part of this chapter, at all events of the military code; does it not more properly belong either to the enlistment part of the code or to the regulation part; because I do not understand that forfeiture is a substantive and distinctive penalty for an offence by itself?—Clause 47 ought to go out altogether, no doubt; but supposing that I struck out Clause 47 there is this difficulty, that if a thing has been for a long time dispersed up and down Acts of Parliament and Articles of War, and you suddenly take it out, there are observations made that you are going to do away with it, and it requires a long explanation; but Clause 47 is undoubtedly declaratory only.

933. Then where would you reproduce it?—I should think the proper place would be the Queen's Warrant; but some of the provisions might go into the Articles of War.

*Mr. Staveley Hill.*

934. When you say, "In manner for the time being directed by Act of Parliament;" to what Act do you refer?—That is the Enlistment Act; it is one of the conditions of enlistment.

*Chairman.*

935. You say that these provisions have hitherto been in Acts of Parliament?—I said some of them had.

936. The only references that I see in the margin are to the Articles of War?—You will find them in the Mutiny Act too.

*Colonel Mure.*

937. In the terms of enlistment, that is to say, amongst the inducements that are held out to men to enlist, it is stated as part of the advantages of the service, that those who enlist will be granted such-and-such boons and such-and-such good conduct pay; if you withdraw these clauses from the penal code, you admit that the men may suffer forfeiture, not as a punishment, but simply at the discretion of the authorities; if the authorities may withdraw these advantages which a soldier has earned by good service, not as a penalty, but merely at their discretion, you practically admit that they may break faith with the soldier. I should like to see it affirmed as a principle that when a soldier has by good conduct earned certain advantages, the authorities should not have the power of withdrawing those advantages unless he forfeits them by misconduct?—The principle is no doubt a desirable one to be observed, but it does not require to be enacted.

938. Has not the commanding officer the power of making stoppages?—He has the power of fining; I am not quite certain whether he has any other power.

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*Viscount Hinchinbrook.*

939. I think there are two sorts of forfeiture by sentence of court martial in the army; there is one case in which forfeiture is entailed by some sentence, and there is also forfeiture which is a sentence alone by itself?—That is so. The court has sometimes the discretion to forfeit, and sometimes it must forfeit absolutely. Sometimes the forfeiture is consequential, and sometimes it is discretionary.

940. Sometimes it is a sentence in itself, and sometimes forfeiture is caused by some other sentence?—That is so.

*Chairman.*

941. What sentences necessarily carry with them forfeiture?—Certain military and civil offences. Supposing that a man is convicted of desertion or disgraceful conduct, or of certain civil offences, he necessarily forfeits.

942. Where is that defined?—In the 168th Article of War.

943. Those are cases where he must forfeit; where do you find the cases where the authorities have the power to make him forfeit?—If you will be kind enough to look at that Paper which I gave to the Committee, beginning at page 17, under the heading "Penal Forfeitures and Stoppages," you will find almost any number of cases referred to.

944. It seems to me that the 168th Article of War is not reproduced in your Bill anywhere; you do not anywhere declare these consequential forfeitures?—No, I propose that they should be entirely left to be declared by the Articles of War or the Queen's Regulations, and not be declared in the statute at all, for the reason that I have already stated. You will find that the provisions of each of these several documents very often cross each other, and the one repeats the other. They all emanate from the Queen's Warrant. I may remark, with respect to the *legal* right to pay, and the *legal* right to the subject matter of penal forfeitures, things that no such right exists; and that, as a fact, they never do deprive a soldier by a subsequent warrant of a benefit which has accrued under a previous warrant. If so, it would be, no doubt, quite as gross a breach of faith as passing an Act of Parliament which deprived a man of what he had under a previous Act of Parliament.

945. The 115th Article of War gives forfeiture of pay as a specific punishment, which can be inflicted by general court martial in lieu of any other punishment, does it not?—That is quite true.

946. In this Bill shall we find anywhere the 115th Article of War reproduced?—No.

947. If that does not find a place in this Bill, where is the power in court martial to give forfeiture of pay at all?—It will find a place in the Articles of War or the Queen's Regulations. The Queen, when she gives these rewards, will direct that they may be forfeited on sentence of court martial.

948. I should have thought that so far as the Articles of War were penal, they ought to be in this Act; if this is a specific penalty, why is not this forfeiture of pay to be as much in this Act as cashiering for instance, which is of a civil character?—It depends upon the way in which you regard these forfeitures. You may regard them if you like as specific punishments, but then they must all be put in the statute. That is absolutely

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absolutely impracticable, because these boons have always been granted at the pleasure of the sovereign; and if you compare these several classes, both in the Appendix and in the Memorandum that I have shown here, you will find that really the statute does very little more, very often, than simply repeat the Warrant.

949. If you look at page 7, Sub-section 7 of Clause 46, you will see that you have put forfeitures, fines, and stoppages as statutory punishments; I very much doubt whether forfeitures ought to be there, because if you put them into that Act all your argument falls to the ground, and they ought to belong entirely to the Articles of War?—I think you have convicted me of a mistake with regard to forfeitures, they ought not, perhaps, to be included in the list of punishments, but fines and stoppages are a different thing altogether.

950. If you have the “forfeitures, fines, and stoppages” as a punishment, in Clause 46 you must somewhere or other give the court martial the power to inflict forfeitures as a penalty?—This word “forfeitures” ought not to be in; “fines and stoppages” are all right.

951. Without going into detail upon the general principle, ought not forfeitures to be treated as a punishment, just as much as cashiering or discharge with ignominy from Her Majesty's service; those are all punishments which do not exactly resemble civil punishments, but ought not forfeiture to be treated as a military punishment, and dealt with in all respects as such?—The question is not whether they are punishments or not, but whether they ought or not to be statutory punishments. Forfeiture of service is dealt with necessarily by Act of Parliament, and it is a condition which goes into the Enlistment Act, that if a man is imprisoned he forfeits his service. Of course instead of being dealt with as a condition, it may be dealt with as a separate class of punishment.

Colonel Lloyd Lindsay.

952. In Sub-section 7 of Clause 46, under the category of punishments, it runs “Forfeitures, fines, and stoppages,” and that is given as one of the “punishments which may be inflicted in pursuance of sentences of courts martial”?—Yes.

Colonel Mure.

953. The 115th Article of War says, “may sentence any officer or soldier” “to forfeiture of pay or pension;” surely when you use the words “sentence to forfeiture” it means a punishment?—I do not deny that forfeiture is treated as a punishment both in the Mutiny Act and in the Articles of War; but I have been explaining to the Committee the great difficulty that there is in dealing with forfeitures by statute. All that I contend for is, that these forfeitures ought to be somewhere in an intelligible form, and in order to put them in an intelligible form they must be put into one document. The document that gives the things to be forfeited is necessarily the Queen's Warrant, because we do not give pay by Act of Parliament; we do not give good conduct pay by Act of Parliament; we do not give medals and decorations by Act of Parliament. Therefore, I submit respectfully to the Committee that the document which gives the thing ought to take it away. I do not deny that

Colonel Mure—continued.

a forfeiture is a punishment; I only say that it ought to be in a different document from the Act of Parliament. The great difficulty that I have been under is this: that I find these forfeitures not in one document, but in six documents, and as a draftsman I have had to choose between the several documents. It is impossible to put the whole law into a statute, because it must be necessarily subject to variation according to the rules of pay and according to a variety of circumstances which we ought never to stereotype in a statute. Therefore, inasmuch as these boons are given as ordinary pay is given, entirely by Royal Warrant, and as there is no legal right to them, it would be much better to have the conditions which take them away in the same instrument as gives them.

954. I do not quite follow your reasoning; you say that because the Crown gives these things of its grace and favour (which is true), therefore they ought to be taken away by the same document; but surely that is not the case; the Crown gives a charter; the Crown cannot take away that charter by another charter, but it must be done by Act of Parliament. So the Crown may grant a dignity, and you cannot take away that dignity except by attainder or some other process. The honourable and gallant Member's objection seems to me to have a great deal of weight in it: that though the Crown determines what these things are in their character, when they have been once promised and given to the soldier in this way, they should not be taken away arbitrarily, but that having been once given they shall only be taken away from him as a punishment, under proper regulations relating to punishments?—With all respect, it appears to me that the illustration of the charter does not apply. The Crown can grant a charter, and it can also declare in that charter that the charter shall determine in a given event; and that is the very thing that I want to be done now. The Queen grants these boons subject to certain conditions of forfeiture under certain circumstances; those conditions of forfeiture at the present moment are distributed over five or six documents. Nobody would contend for a moment that the Crown had any right whatever to deprive a soldier of any advantages which had accrued to him under a particular grant. The Crown constantly alters these warrants for the benefit of the soldier, but it was never pretended that the Crown ought to deprive any soldier, or could really deprive any soldier of any benefit which had accrued to him. I only stated with great deference to the Committee that it was more convenient, so far as I could judge, that the depriving conditions should be in the same document as the granting conditions; in other words that the Crown should state that these things might be taken away by court martial instead of having the same provisions repeated over and over again in several documents.

Sir Henry Havelock.

955. As an illustration of the objection which is now being urged in the latter part of the 117th Article of War, there are two distinct species of forfeiture which are avoided by sentence of court martial; one is “to forfeit any advantage as to pension which a man may have earned by past service” and the next is “to forfeit all right to good conduct pay and to pension on discharge, whether



*Sir Henry Havelock*—continued.

whether in respect of past or future service." Those are forfeitures which are awarded distinctly as part and parcel of the sentence of the court martial, and which it is optional with the court either to award or not; ought they not to be reproduced in the same way in the Act, because they cannot be reproduced in a warrant?—They are reproduced in a great many documents.

956. I do not think you have quite followed me; I am speaking of those which are specific forfeitures by sentence of court martial in the 117th Article of War; the one is forfeiture of pension for past service, and the other is forfeiture of good conduct pay and pension in respect of past or future service; that cannot be by warrant?—I have already stated that forfeiture of service must be in the Act of Parliament, and I have drawn a distinction between forfeiture of service, which is necessarily a statutory provision, and forfeiture of the boons of good conduct pay and badges, and military decorations and rewards. You enlist a soldier for a certain number of years; if he misbehaves himself, he forfeits his service; that is, and must remain, in the Enlistment Act. I am perfectly aware that these previous Acts have been attempted to be altered, and, in my opinion, illegally altered, sometimes by the Articles of War.

*Mr. Staveley Hill.*

957. But do not his badge pay and other boons come to him under the Act of Parliament under which he enlists?—No.

958. Are they not secured to him as a part of the terms upon which he enlists?—No, they are not.

*Chairman.*

959. You have drawn a distinction between, on the one hand, service, which you say is the only thing that is secured to the man by Act of Parliament; and, on the other hand, benefits, viz., pay, good conduct pay, good conduct money, good conduct service and military decorations, which you say are not secured by Act of Parliament, and therefore may be taken away by the power which gives them in any form or manner that the Crown pleases?—Certainly.

960. Supposing (though it is not a likely supposition) that the Crown vested in the commanding officer the power to take away all these things of his own authority whenever he chose, you would say that that would be perfectly legal?—Certainly; I am not certain that the commanding officer has the power, but I think the Commander-in-Chief has the power of doing it.

*Mr. Campbell-Bannerman.*

961. That could not be done, I suppose, if it was contrary to the warrant in operation at the time when the man enlisted?—No.

*Chairman.*

962. But you mean that a warrant might be made any day taking these things away upon any terms?—Not taking away pre-existing things. Nobody knows better than you, Sir, that the Crown practically legislates to a very great extent; it is sometimes done by Orders in Council, and sometimes by Queen's Warrants. With respect to everything relating to the Civil Service, which is exactly in the same position as the military service in relation to pay, the Crown legislates by things called warrants. It is the

O.111.

*Chairman*—continued.

practice of the Crown in legislating for its military and civil servants never to take away any existing right. If a military servant or a civil servant is deprived unjustly of pay, the only remedy that that servant has is to appeal to Parliament; and he never has had any legal remedy even for ordinary pay.

963. What is most like it is the superannuation in the Civil Service?—Quite so.

964. Is not that settled by Act of Parliament?—Not in the least.

965. Is there not a Superannuation Act?—Yes; but the Treasury may say to-morrow that I shall not have a sixpence. It gives no right at all to superannuation.

966. What does the Superannuation Act do, then?—The Superannuation Act prevents the Treasury from granting superannuations excepting under certain circumstances; but it authorises nothing; it is not an enabling Act.

*Mr. Campbell-Bannerman.*

967. It is an Act which is restrictive of the action of the Treasury?—Quite so.

*Chairman.*

968. In point of fact, these Army Warrants stand to the Military Service in the same relation as the authority of the Treasury does towards the Civil Service, that in respect of future service at all events they may prescribe whatever rules they like?—Exactly; and they alter them constantly, both as regards the Civil and the Military Service.

969. But these being treated as a matter of mere grace and favour, how came they to be made specific penalties in this way?—My real opinion is that it was a blunder altogether. Mr. Clode tells me that it is of recent growth, and I think of very bad growth. They ought never to have been in an Act of Parliament at all; and why they came in I cannot tell you.

*Mr. Merewether.*

970. Does that apply to the stoppages too?—The stoppages are in the Mutiny Act; that is a different thing.

*Chairman.*

971. What seems then to follow from your view is, that as we begin by saying Clause 47 ought not to be there at all?—Certainly.

972. And that the word "forfeitures" ought not to be at all in Sub-section 7 of Clause 46?—Certainly.

973. That is to say, that the authority of courts martial to deal with forfeitures would be an authority delegated to them by warrant as being the mode by which the Crown thought fit to deal with this matter?—That is my real opinion. I submitted it to the Committee as I submitted it to the War Office; but of course I do not wish to press it unduly.

*The Judge Advocate General.*

974. But how would you have the Crown put in motion in that case?—The Warrants are, I believe, Secretary of State's Warrants approved by the Treasury.

975. Would you have a court martial recommend that the Secretary of State or the representative of the Crown, should issue one of these Warrants?—No; what the Treasury and the Secretary of State would do would be simply to make

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make the code complete; it is now very nearly complete, but it wants to be re-drawn. I would have a complete code with relation to good-conduct money, good-conduct service, and military decorations and rewards (or I will except military decorations and rewards, because I believe that all the rules as to medals are complete); but with respect to good-conduct badges and good-conduct pay, and good-conduct service, I should simply say by warrant what the soldier was to have, and when he was to have it, and how he was to have it; and I should never make the loss absolutely consequential, but I should make it consequential in the discretion of a court martial.

*Chairman.*

976. The way in which the thing would be worked would be this: these boons are granted by Warrant, and the Warrant would prescribe how they are to be taken away; and the authority to the court martial for taking those things away would be derived from the Warrant by which they are given?—Just so.

977. Therefore the authority of the court martial to deal with these matters would not be derived from the Act of Parliament, but from the Warrant?—Just so.

978. And the Warrant would prescribe in what cases the court martial should or should not take these things away, and how they should proceed in the matter?—Just so.

979. Treating them, therefore, as boons of this character, you would deal with them, not in the Statute but in the Warrant?—That is quite so; I think that a soldier ought to have a document easily accessible in which he can learn what he is entitled to; a secretary of the Treasury himself told me, the other day, that the thing is so complicated with a variety of documents that he cannot make out himself when a soldier forfeits his pay; really there is no subject more difficult to understand (except "Bradshaw") than when a soldier forfeits his good conduct pay; and the whole of my object has been to represent to the Committee and to the Government that it ought to be made plain to the soldier.

*Colonel Mure.*

980. I want the principal recognised in this penal code that a soldier is not to be subject to any penalty except for an offence; and if you leave this out, not only can the court-martial inflict the punishment, but you admit that outside the court martial the man can be punished further?—I understand your view.

*Mr. Campbell-Bannerman.*

981. The conditions of service; that is to say, the length of service, are directed by Act of Parliament, and are to be continued to be so; but every question connected with pay is outside of the Statute altogether?—Quite so.

*Colonel Mure.*

982. I want this Act of Parliament to protect the soldier against any forfeiture except that which a court martial can inflict under this code?—With all deference it would be absolutely impossible, because the conditions on which things are forfeited are not always court martial offences.

983. But you lay down certain crimes and certain penalties, and there is no doubt that these

*Colonel Mure—continued.*

forfeitures amount to a penalty; I maintain that the soldier should have before him what is the penalty for certain offences?—I have had the object in view, so far as a draftsman can have it in view, that the soldier shall have the matter put plainly before him; I do not think that if the Committee will look at the analysis in the Appendix which I have made of the penal forfeitures and stoppages, they can doubt that the confusion is now inextricable and intolerable. The whole subject must be in one place or another, I submit, in order to remove that confusion; we do not give either civil or military pay or bonus by Act of Parliament; therefore I submit to the Committee, as I submitted to the War Office, that they ought to be out of the Act altogether.

*Chairman.*

984. You have got a number of punishments here to which, as it seems to me exactly, the same objections would apply; for instance, in Clause 46, in the case of forfeiture of seniority in the army; everybody knows that seniority in the army is settled, not by Statute, but by Warrant, and so forth; therefore the same objection, it seems to me, should apply to forfeiture of rank as to forfeiture of these things; but you find no difficulty in putting forfeiture of rank into the Statute amongst your punishments, although it is perfectly true that the documents by which rank is regulated are entirely outside the Statute?—I cannot possibly gainsay that; but there is not the same confusion with respect to forfeiture of rank as I find with respect to the other. I admit that you are logically right, but practically the one thing I could deal with, and the other I could not.

*Mr. Staveley Hill.*

985. I think you have nothing in your scheme of a Bill which enacts that there shall be a stoppage of pay or wages during the term of imprisonment?—If not, the next clause as to stoppages should deal with it.

986. I would draw your attention to the similar section of the Naval Discipline Act: "The punishment of imprisonment, whether on board ship or on shore shall involve disrating in case of a petty officer, and reduction to the ranks in case of a non-commissioned officer of marines, and shall in all cases be accompanied by stoppage of pay or wages during the term of imprisonment"?—I do not think I have any such clause, but there would be no objection to it, I presume, if it were wished for.

*Mr. Hayter.*

987. In Clause 47, is not "good conduct service" surplusage?—I think that good-conduct service altogether is surplusage there, but they use the expression constantly. So far as I understand, it is only called "conduct money."

988. There cannot be bad-conduct service?—There can be bad conduct, and he forfeits by that; "good-conduct pay."

*Chairman.*

989. Mr. Clode has made a very important observation to me which, I think, bears very strongly upon this point, and that is, that hitherto it has always been very carefully observed that no matters with reference to pay appear upon the Statute, but that pay has always been regarded as a special prerogative, and that if you introduce questions

*Chairman*—continued.

questions of pay into the Statute, you might be giving the soldier statutory rights in reference to pay which hitherto he has never had?—That is so, no doubt.

*Mr. Merewether.*

990. What is the difference between stoppages and forfeitures?—When the pay of a Civil servant or a military officer is actually assigned to him, he has a legal right to it. The Court of Queen's Bench held that, supposing that the pay of an officer had been paid over and earmarked as belonging to him, he had a right to it; but that until it was earmarked, he had no right to it; I have no doubt that the Mutiny Act deals with stoppages on that principle. The process is this: The captain of the company has money to pay to his soldiers; therefore the money is appropriated *ipso facto* to each of those soldiers. Then the Act says, that the captain may stop the money for debts, and the reason why it is put in an Act of Parliament is, that legally, as soon as the money got into the captain's hands it was appropriable to, and the property of, each soldier; that is I presume the technical reason.

*Chairman.*

991. Then it did not profess there to deal with the forfeitures?—Not in the least.

*The Judge Advocate General.*

992. In the 106th section of the Mutiny Act, which is the well-known Bastardy Clause, pay is mentioned also; you drew that clause, did you not?—I did; wherever the money has become earmarked for the soldier, then it can only be dealt with by Act of Parliament.

*Chairman.*

993. All that this clause amounts to at present is to say that forfeiture of service shall be regulated as the Queen chooses?—That is all.

994. Passing now to Clause 49, is that any alteration of the existing law?—Clauses 49, 50 and 51 represent the existing law.

995. Is Clause 52 any variation of the existing law?—The whole of Clause 52 is intended to represent the existing law.

*Mr. Merewether.*

996. Except one line, line 28, in sub-section 6, "subject to military law"; supposing that he is not subject to military law, what then?—A sentinel is bound to take anybody into custody who is committed to his custody by his superior officer. I put in "any person subject to military law," but I am told that he must take anybody.

*Chairman.*

997. Clause 53 seems to me as if it ought properly to come under the head of "desertion"; it appears to be merely a method of proceeding in default, or *en contumace* against a deserter?—That is so; we think it ought to be grouped under "desertion."

998. It is headed "Court of Inquiry"; what this really is, is merely a sub-section under the head of "desertion"?—I agree that it is in the wrong place.

999. With regard to the courts martial clause, have you any remarks to make?—My instructions were to consolidate the law with respect to regimental courts martial, and to leave the powers of commanding officers blank; so that the Com-

*Chairman*—continued.

mittee may, if they like, strike out "regimental courts martial," and increase the powers of commanding officers.

1000. Where are the powers of commanding officers defined?—At page 34 of my Bill: "It shall be lawful for Her Majesty, by such Articles of War, to empower the commanding officer of a regiment to inflict imprisonment, with or without hard labour, on a soldier for a period not exceeding "

1001. That is to say, those words would give to the commanding officer, practically, the whole of the powers of a regimental court martial?—That is so, and it is so intended.

1002. Then, does Clause 54 reproduce the constitution and jurisdiction of courts martial just as it is?—Yes; I ought to state with respect to Clause 54, that the jurisdiction of regimental courts martial would be considerably extended in one sense by leaving the clause as it is, because the way in which this Bill is drawn is this: that these courts martial should have jurisdiction, generally speaking, over every offence; and I intended to leave it to the Articles of War to restrict the jurisdiction, assuming that they did not wish them to try drunkenness, or offences of that sort. As I have already stated, there has been a considerable difficulty with respect to trying that class of offence which we have had so often, viz., disobedience to the lawful command of an officer for instance; that may be a crime worthy of punishment from death to zero almost; and I have so drawn this Bill that that crime, taking that as an example, may technically be tried by any jurisdiction; and throughout, as a general rule, any of these crimes may technically be tried by any species of court martial for the reason I have stated, with a view to avoid that enormous difficulty which the Committee will see arises from the fact of treating such a crime as disobedience of a lawful command necessarily as a crime of the highest possible magnitude.

1003. At present, I understand that an offence punishable with death or penal servitude, must go to a general court martial?—Yes; I have not restricted the jurisdiction of a regimental court martial to the same extent technically, as it is restricted by the existing law.

1004. At present, where the maximum penalty is very high, the offence must go to a general court martial?—Certainly.

1005. But these offences may be of all characters down to the very lowest, and, therefore, you have given power to the lower court martial to deal with the slighter cases of the same character of offence?—That is my intention.

1006. For instance, disobedience of orders, which would be subject to a very high penalty in action, might be subject to a very low penalty in time of peace?—That is my object, but it is not quite correctly carried out at present.

1007. Is there any alteration of the law in Clause 55?—I have made no alteration knowingly; that is to say, I have not intended to alter the law.

1008. In Clause 56, is there any alteration of the law?—I have not intended to alter the law there.

1009. In Clause 57, is there any alteration of the existing law?—There is no alteration of the law in Clause 57 until you come to Sub-section 12. It seems to me so very important, that I have made statutory what I understand is the practice;

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practice ; that in the case of an equality of votes the prisoner shall be deemed to be acquitted. That is, I believe, the practice, but I thought it was so important that it ought to be declared by statute.

1010. With reference to a good many of these sub-sections, at all events, are they not rather matters of regulation than of statute?—What I have endeavoured to do, is to select, as far as I could, what I thought ought to be statutory.

1011. The first one is, of course, necessarily statutory?—Numbers 1, 2, and 3, are necessarily statutory; No. 4 is now statutory, and may, of course, either be statutory or not, and I should say the same of No. 5, No. 6, and No. 7. No. 8 I thought so important as a protection, that it ought to be statutory. I put it in the Naval Discipline Act years ago, and it seems to me that it ought to be here. I also put in No. 9 for the same reason, because it appeared to me quite clear that that ought to be an inflexible rule. I should have the latter part of it statutory certainly: "He shall not, except as otherwise provided by this Act, be the officer who convenes, or whose duty it is to confirm the sentence of the court," and so on; but whether the first part of it should be statutory or not, is a mere matter of taste.

*Viscount Hinchinbrook.*

1012. Is it not very desirable for officers to have all these rules together?—Yes. Sub-section 10 is certainly statutory, because, otherwise, there would be questions as to whether that was legal or not. Sub-section 11 decidedly ought to be statutory. I have made No. 12 statutory, because it seems to me extremely important that it should be settled once for all, and there was a doubt about it some years ago I believe.

*Sir Henry Havelock.*

1013. With reference to Sub-section 11: "If on account of the illness of the prisoner before the finding it is impossible to continue the trial, the court may be adjourned, or dissolved; but, if dissolved, the prisoner may be tried again"; the court may be adjourned, and it may be found impracticable from the length of the sickness to re-assemble that same court, may it not?—Then they must dissolve it, and, if they think it of sufficient importance, have a new trial.

1014. You contemplate, in that case, that the court must be dissolved?—It must be so, certainly. Sub-section 12 appears to me too important to leave out, and Sub-section 13 must be statutory. I do not think there is anything there that one could leave out.

*Colonel Mure.*

1015. Would the omission or infringement of these regulations in the formation of a court martial render the court illegal?—Certainly.

1016. Are there any other rules or regulations which are, perhaps, not here, but which it is necessary to observe in constituting courts martial, and the omission or infringement of which would render a court martial illegal?—I have endeavoured to include all that I thought would render a court martial illegal. It is a very serious thing to render a court martial illegal, and therefore I should not unnecessarily include in the statute any provisions, except those which I thought ought to determine the question of legality.

*Colonel Mure*—continued.

1017. The effect of their being in the statute is to give them force?—Yes, certainly; being in the statute, if they were disobeyed, in my opinion the court martial would be illegal.

*Chairman.*

1018. Clause 58 is as to what is commonly called the drum-head court martial, is it not?—Yes, the name "Field Court Martial" has been used instead of "Detachment General Court Martial," in order to avoid the difficulty of confusion between detachment general courts martial and detachment courts martial. We thought that "Drum-head Court Martial" was rather too slangy a name; you could not put it in an Act of Parliament. Seeing that you have got a detachment court martial, and then a detachment general court martial, it leads to confusion.

*Sir Henry Havelock.*

1019. A detachment court martial would assemble very often in the colonies, but it would not necessarily be in the field at all?—Quite so.

*Chairman.*

1020. I see that you have limited it to officers not under the rank of captain; there is no such limitation in the Articles of War or in the Mutiny Act, is there?—I cannot recollect off-hand.

*Mr. Merewether.*

1021. The words "in the field," in your scheme are new, are they not?—Yes. I believe it really means a drum-head court martial.

*Mr. Herschell.*

1022. You are not to try a man for an offence against the property or person of an inhabitant in ordinary times; because, according to this, you might try him for anything he did say in Jamaica?—Quite so. I submit to the Committee that the Clause had better stand as it is. The reason for this is tolerably evident. If, when in the field, that is to say, when the army is actually moving, some soldiers plunder the inhabitants, and the provost marshal is not there, and inasmuch as the provost marshal is not there these men cannot be shot, thereupon the officer in command says to two or three officers round him, "These men are caught red-handed plundering; the provost marshal is not here; we will have a court martial upon them and shoot them." Then they hold a court martial, and the commanding officer confirms the sentence, and they shoot the men or hang them. If it is an offence committed by one soldier against another soldier they have the evidence always there, and they can try him by detachment court martial; but if, when on the march an unfortunate woman is outraged or a man is killed wantonly or a child is injured, they cannot carry the evidence with them, and they hang the man, after holding a court martial there and then, on the next tree. That is the real reason of it; it has nothing whatever to do with ordinary court martial proceedings.

*Chairman.*

1023. What is ordinarily called a drum-head court martial, can only be held upon the complaint of an injured inhabitant?—That is so, and that is what it was intended for.

1024. Supposing

*General Shute.*

1024. Supposing that a camp follower murdered a wounded soldier, and robbed him, which constantly happens after action, he could not be tried by this court martial, could he?—A camp follower I should hang immediately under the provost marshal clause; he is subject to martial law, and they have got him there, and they would simply have to keep him. The difference is this: a camp follower is a part of the Army, but you cannot lug these unfortunate inhabitants with the Army for miles and miles as witnesses, and you must hang the criminal at once.

1025. If an inhabitant had murdered one of your wounded soldiers, and robbed him, what would you do?—Then you would kill him by the laws of war; that has nothing to do with my Bill or with courts martial.

*Mr. Parnell.*

1026. Is not a camp follower under martial law?—Of course if the man who committed the crime was a camp follower, you would try him; but this clause has only to do with the difficulty of getting the evidence of an outraged inhabitant carried on with you, so to speak. You can only try the man where you have the inhabitant who is injured.

*Mr. Herschell.*

1027. It would be in your view necessary to keep this power for service in the field?—Yes.

1028. If you simply left it "any place beyond seas," that might apply to all times, even with a perfectly settled state of things?—Quite so.

*Chairman.*

1029. Have you a remark to make upon Clause 59?—I have nothing to say on Clause 59; the time of sitting appears to me to be a most material thing.

*Sir Henry Havelock.*

1030. That is a new provision, is it not?—It is a new provision, but it is the practice I believe. It is taken from the Naval Discipline Act.

1031. As to the president having the option of considering whether he will sit on Sundays or not, that option rests not with the president, but with the convening officer as a matter of practice, does it not?—Then I am wrong as to that.

*Mr. Staveley Hill.*

1032. There might be a case in which the convening officer might be absent, and in which they would not have an opportunity of consulting him on the Saturday night?—No doubt.

*Chairman.*

1033. Have you any remark to make with reference to Clause 60?—I have nothing to say on that; that is the same I believe as the existing law. It is a privilege to a prisoner, and it seems to me that it clearly ought to be statutory.

*Mr. Parnell.*

1034. With reference to Clause 61, as to the proceedings of courts martial, do you see any objection to giving to the prisoner tried before a court martial the same power of employing a legal adviser as is given to a prisoner tried before an ordinary civil court of judicature?—That is not a question to ask me, I think; I am not here in the capacity of a general witness.

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*Chairman.*

1035. (To Colonel *Rocke*.) I understand at a court martial a military officer prosecutes, does he not?—Yes, certainly.

1036. And the judge advocate at that court martial is not supposed to be a party to the prosecution?—No, he is perfectly impartial; it is his business to conduct the proceedings with legality, to protect the prisoner in fact against any illegality.

1037. He is a legal assessor to the court?—Precisely so.

1038. And he has nothing to do at all with the prosecution?—His functions are very clearly defined in the Queen's Regulations, but they are not mentioned in the Articles of War.

*Mr. Herschell.*

1039. You say that a military officer prosecutes; is he a military officer who belongs to the regiment or knows something of the matter; how is he chosen?—The military officer is chosen in regimental courts martial by the commanding officer, and in a district or general court martial by the officer who convenes the court.

1040. Is he selected because he is supposed to be a competent man to conduct the prosecution?—Yes.

1041. He is in some sense selected because he is a competent man to conduct the proceedings?—That is so with regard to the prosecutor.

1042. He is selected in district courts martial at all events, because of his supposed capacity to prosecute?—Precisely so.

*Chairman.*

1043. For instance, supposing that a soldier in a regiment were tried for disobedience to orders, who would be the man ordinarily selected to prosecute; would it be the adjutant of the regiment?—It would be the adjutant of the regiment ordinarily.

1044. He would be taken as being the executive officer of the regiment?—Just so.

1045. And not from any notion of his having some special acquaintance with military law?—Precisely; he would be the proper person, as representing the commanding officer who prefers the charge. The commanding officer prosecutes through his adjutant.

1046. He is not selected because he possesses any special legal qualifications?—No, not at all.

*Mr. Parnell.*

1047. From the fact of his being repeatedly selected for this office he would have a special acquaintance with the subject, would he not, independently of his being an educated man?—No doubt.

*General Shute.*

1048. The fact is that, practically, in all trials of non-commissioned officers and soldiers, the adjutant of the man's regiment prosecutes, who has all the books with reference to his description and so on?—Yes.

*Colonel Mure.*

1049. In a court martial, in a great garrison, how is the prosecutor chosen?—The adjutant general or the general officer selects his prosecutor, entirely having in view the aptness of the officer selected; generally speaking, the brigade major, or the deputy adjutant general, or the deputy quartermaster general is selected.

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1050. In

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1050. In almost every case of court martial on a private soldier the prosecutor would be the adjutant of the regiment to which the prisoner belonged, would he not?—In the small courts, undoubtedly.

*The Judge Advocate General.*

1051. Have you known cases in which a soldier has had an officer to defend him, the officer having appeared as the prisoner's friend?—Yes; it is quite within the rules of the service for an officer to appear to defend a soldier as his friend.

Mr. Merewether.

1052. (To Sir Henry Thring.) Is there any objection to putting the oath in the Act in terms?—None at all.

Mr. Staveley Hill.

1053. In the same way that it is in the Naval Discipline Act?—Yes.

Colonel Mure.

1054. I suppose you would put in all these oaths?—Certainly, if the Committee think it desirable.

Viscount Hinchinbrook.

1055. At present, in a district court martial, the oath is taken by the court when every case commences; you try a man, and when that case is finished you swear the court again before the next case commences?—I suppose that there is no objection to that. I presume that it is a new court in every case, and therefore, technically, I presume that they re-swear the court, but I cannot give any personal opinion upon the question. I should have thought that it was right to constitute a fresh court. I think it is quite clear that the court must be re-sworn each time if you have a fresh prisoner, because, as I understand it, a court martial is not a court at all, but is simply a set of officers assembled together to try a question of fact.

Mr. Herschell.

1056. If you have a jury to try a case of felony against six prisoners, you swear the jury at once for all of them?—Yes.

Mr. Merewether.

1057. But supposing that one of the prisoners said, with reference to one of the members of the court, "I will not be tried by that man; he has shown symptoms that I do not like on the last trial;" what then?—I have really no opinion with regard to that subject.

Mr. Herschell.

1058. Do you convene a court martial distinctly for each separate case that is to be tried?—It must be so.

1059. Then you convene it by one stroke, so to speak, for all the prisoners; you do not convene a separate court martial to try each prisoner?—I thought they convened it for each prisoner.

Chairman.

1560. What do you say upon the question of putting the oath which is now in the Articles of War into the Act; that of course would prevent the oath ever being altered except by statute?—I really have no opinion upon it.

1061. You say here, "In the prescribed form," but you do not say where it is prescribed?—"Prescribed" means prescribed by the Articles of War; and I did in this case as I always do in cases of this sort; I always put the form of the oath into a document which can be changed easily. But I understood that several of the members of the Committee think the form of oath of very great importance. If the form of oath be, in their opinion, of very great importance, of course it ought to be in the statute; but I have no means personally of judging whether it be so or not.

Mr. CHARLES M. CLODE, re-called; and further Examined.

Mr. Clode.

Chairman.

1062. CAN you give the Committee any information as to the oath?—The oath, as it now stands, is certainly 200 years old, and was always enacted by statute until in the year 1829, I think, it got transferred to the Articles of War. I do not say that it is a conclusive reason for maintaining it, but you will find this oath construed by the American courts (*Coffin v. Wilbur*, 7 Pick. Rep. p. 150), and it has a definite meaning attached to it by our own courts. Not long since the oath came before the late Mr. Justice Willes, who upheld the proceedings of a court of inquiry mainly upon the ground that the members were exercising an exclusive jurisdiction; that they were dealing with questions not subjected to the rule of the common law, but to the rule of the court military. In many cases unquestionably the oath is the only criterion of authority; and I need scarcely remind so many lawyers that one of the greatest constitutional cases on record was mainly decided by Lord Somers upon the oath which the Barons of the Exchequer took. It was the criterion of their authority, and the limit of their jurisdiction. Therefore, I cannot help attaching very great importance to an oath which I find in

Chairman—continued.

history and in law has been recognised as being of especial value. In the history of the oath, with reference to the Navy, there is a very important opinion of Lord Thurlow's. The question arose in this way: when Lord Howe was Admiral of the Fleet, he had a great many difficulties which he could not solve; he stated them to the Admiralty, and Lord Thurlow's opinion is lying upon the table. The only way in which at that time the authority of courts naval was upheld, was, that though Parliament had summed up the customs of the Navy in a statute, yet the construction of the statute mainly rested on usage. The oath of the Army and Navy was the same until the year 1861; then the naval oath was altered, and it was assumed that no substantial alteration was made, because there was a Parliamentary Paper (208, 5th July 1860) prepared and submitted by the Duke of Somerset, which led the House to believe, and I have no doubt according to his view, correctly, that "no change in effect" had been made by altering the oath which prevailed in the Navy, justifying the officers in referring "to the customs of the Navy," to the oath which  
now

*Chairman*—continued.

now obliges the court to decide according to law. On the construction of the naval oath these courts would have to decide according to the ordinary rule of the common law, and if so, it seems to me that you alter the legal status of the military court, and make it an inferior court amenable to Westminster Hall; and I fear that very few courts martial would be held legal if you did not allow the courts fairly to exercise their discretion and authority in regard to questions of discipline submitted to them.

*Mr. Staveley Hill*

1063. Are you aware whether any defect or injury has ever arisen from the change of the old oath formerly in use in the Navy to the oath now in the Naval Discipline Act?—With great submission, I think there is no analogy whatever between the Naval Discipline Act and the Army Act. Parliamentary Papers were not long since laid before the House of Commons, and you will find, taking the year 1876, that in the Navy there were only 176 courts martial held (the

*Mr. Staveley Hill*—continued.

summary punishments being 62,162), and in the Army 16,855 courts martial. Therefore, to adopt the Naval Discipline Act for the Army would be to apply a code under which very few courts martial are held to a service where almost all its punishments are punishments by court martial.

*Chairman.*

1064. (To Mr. O'Dowd.) You have probably heard the discussion on the subject of the present military oath; is it your opinion that it might be a good thing to substitute in the place of it the oath in the Naval Discipline Act?—I think so, decidedly. The present oath is very long and complicated, and I do not think that very many of the officers quite understand it.

1065. Does it seem to you that the words of the oath in the Naval Discipline Act, "I will duly administer justice according to law, without partiality, favour, or affection," are sufficient?—I think they meet the case. It is all that you require on the part of the judge who is trying the prisoner.

*Mr. Clode.*

28 June  
1878.

*Tuesday, 2nd July 1878.*

MEMBERS PRESENT:

Mr. Campbell-Bannerman.  
Admiral Egerton.  
Sir Alexander Gordon.  
Sir William Vernon Harcourt.  
Mr. Hayter.  
Mr. Herschell.  
Viscount Hinchbrook.  
Mr. John Holms.

The Judge Advocate General.  
Colonel Loyd Lindsay.  
Mr. Merewether.  
Colonel Mure.  
Major O'Beirne.  
General Shute.  
Sir Henry Wilmot.

SIR WILLIAM GEORGE GRANVILLE VERNON HARCOURT, Q.C.,  
IN THE CHAIR.

Sir HENRY THRING, K.C.B., re-called; and further Examined.

*Chairman.*

Sir  
H. Thring,  
K.C.B.  
2 July 1878.

1066. HAVE you any remarks to make with regard to Clause 62?—Clause 62 simply gives the necessary statutory powers with respect to witnesses.

1067. Are they the powers and regulations which exist at present?—Certainly. They are the powers relating to procedure, which require to be re-enacted; such, for instance, as the provision with regard to the administration of the oath. The privilege from arrest is, of course, an enactment, although it is comparatively immaterial now. Then the provision with respect to witnesses objecting to take an oath requires to be statutory.

1068. You have made statutory the provisions which are necessary for the conduct of the court, and which are not at present in some respects, I suppose, provided for by the Mutiny Act, or the Articles of War; for instance, the provision contained in Sub-section 3?—That is provided for, I think, by the Mutiny Act; but I have endeavoured to put it in a shorter way, and have made it more general.

1069. Have you anything to say with regard to Clause 63?—Clause 63 is to facilitate the production of documents as evidence before courts martial. It was supplied to me by the Deputy Judge Advocate General as being, in his opinion, of great value. I believe that it represents, to a great extent, the existing law.

*Sir Alexander Gordon.*

1070. In Sub-section (e), of Clause 63, it is laid down that a copy of any record in the regimental books purporting to be certified to be a true copy, shall be received as evidence; is that as the existing law stands?—I daresay not, but otherwise you have to call the man who signed it. Whenever you make a document evidence, you say, that if it purports to be signed by the proper officer, it shall be *primâ facie* admissible; otherwise you cannot admit it.

*Chairman.*

1071. In all these cases, in the ordinary law of evidence where a document is made to prove

*Chairman—continued.*

itself, you assume the signature if it purports to be a proper signature?—Yes, and the onus lies upon the other side to prove that it is not so.

1072. The word “purporting” is the word which is usually employed with reference to all such documents in courts of law, is it not?—Yes; indeed if you do not have that word introduced these clauses are simply useless, because otherwise you must call the officer who signed the document, which, of course, makes the document practically inadmissible, where you are unable to call the officer.

*Mr. Campbell-Bannerman.*

1073. The expression is not peculiar to Sub-section (e), but it runs through the whole clause, does it not?—Quite so.

*Chairman.*

1074. “Purporting” is the word which is usually employed in the law of evidence; for instance, in the case of a bank transfer book, or any book of that kind, if an entry purports to be a proper entry, you assume that it is so?—There is no other mode of making evidence admissible.

*Sir Alexander Gordon.*

1075. I asked you whether it was according to the existing law, and you said that it was not?—I beg your pardon; I said that I did not know. These clauses were supplied to me by the Deputy Judge Advocate General, and I cannot answer which of the particular documents is admissible now. All I can answer is, that if the Committee are pleased to make it admissible, it is essential to have the form “purporting to be signed.”

1076. I understood you to say that it was an increase of severity as compared with the present practice?—I intended to say that I was not prepared to reply as to the details of these clauses, whether they were the same as the existing law or not; but that the Deputy Judge Advocate General had given me the provisions, and that I had simply taken care that they were in the proper form.



Mr. JAMES CORNELIUS O'DOWD, re-called; and further Examined.

*Chairman.*

1077. CAN you give the Committee any information on this point?—Perhaps I may be allowed to say that these clauses are very much mine, and I think I can undertake to assure the Committee

*Chairman*—continued.

that they are almost exactly the counterpart of the existing law. I may also add that in several thousands of cases I have not known one of them to be used to the undue detriment of the prisoner.

Mr. O'Dowd.

2 July 1878.

Sir HENRY THRING, K.C.B., re-called; and further Examined.

Mr. Merewether.

1078. AT present the law of the army in India and the law of the army here are different; that is to say, there are provisions applicable to the former and to the latter respectively; now you have put them together; is there any provision in this statute about the law which is to be administered, because, as you are aware, the law of evidence in India, being under statute, differs in some respects from the law of evidence under the common law in England?—I have not inserted any clause with respect to the law of evidence. So far as this scheme of a Bill is concerned, it does not apply to Indian Native troops; and the white officers are under the Mutiny Act.

*Chairman.*

1079. During the short time that I was one of the law officers of the Crown, as perhaps you may be aware, this question came before us, and we advised that the English army was subject to the English law of evidence, and not to the Indian law of evidence?—That was so. (Mr. O'Dowd.) If you make no statutory provision as to what law of evidence is to guide courts martial; you have in India now an Act of the Indian Legislature, that is to say, the Indian Evidence Act, distinctly describing that courts martial in British India are to be governed by that Act; so that it appears to me that the absence of any statutory regulation governing the evidence at courts martial is a question for the Committee to consider. In India courts martial now carry their own law of evidence everywhere. The provision as to Indian evidence is at the end of the 101st section of the Mutiny Act: "No court martial shall, in respect of the conduct of its proceedings, or the reception or rejection of evidence, be subject to the provisions of the Indian Evidence Act, 1872, or any Act of any Legislature other than the Parliament of the United Kingdom."

1080. (To Sir Henry Thring.) Does that section find its place anywhere in your Bill?—Not at present, but it ought to do so. The question is one of great difficulty.

1081. But that has been settled, and it is in the Mutiny Act; if your Act is a codification of the existing law, why are we not to take the law as it is settled?—I will take an instruction as to that point. I ought to have put it in, no doubt. (Mr. O'Dowd.) If I may be allowed to say so, what we should like would be to have a general provision; for instance, Clause 63, which provides for certain documents, and which is now under discussion, might begin by some such words as these: "Every court martial shall, in respect of the admission or rejection of evidence, be subject to the law and practice then in force in the course of ordinary criminal jurisdiction in England." Some general words of that kind, I am

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*Chairman*—continued.

inclined to think, would get rid of any difficulty, not only about the Indian Evidence Act, but also about any future local Act. The Indian Evidence Act applies to British India; but troops are stationed in many places in India which are not in British India, and then they would revert to the law of England.

Mr. Campbell-Bannerman.

1082. This question arose in the House of Commons last year; do you remember how?—I had some little conversation upon the subject with Mr. Leith, who had a very high opinion, as most of us have, of the Indian Evidence Act, and was anxious that we should apply the Indian Evidence Act to all courts martial. He had an amendment on the Paper, and I think the effect of the amendment was a direct contrary of the 101st section of the Mutiny Act; he thinking that the Indian Evidence Act was so good that it ought to be adopted generally.

Sir Alexander Gordon.

1083. (To Sir Henry Thring.) I do not quite understand the alternative proposed in Sub-section (f) of Clause 63: evidence of the delivery of a notice or letter issued by the military authorities, and addressed to the then last registered place of abode of any man enrolled in the Army Reserve, is to be evidence that such notice or letter was brought to his knowledge?—It is a very common provision. You prove the service of a notice by calling the man who delivered it, or you produce the letter containing such notice addressed to his place of abode.

1084. But of course the man who is to be convicted will not produce the letter that he has received. The evidence of the delivery is, I suppose, the evidence of the postman who has delivered the letter at the man's residence?—I do not think that this provision is right, and I will alter it. (Mr. O'Dowd.) It is in the existing law. It follows very much, not in form, but in substance, the provision of the Militia Act, which prescribes that certain notices shall be deemed to have been brought to the notice of the militiamen as to the date at which the regiment assembles for training. (Sir Henry Thring.) I think it requires a further addition, and I will attend to it.

*Chairman.*

1085. Are there any alterations in Clause 64?—Under Clause 96 of the Mutiny Act, the punishment for perjury on the part of an officer is cashiering, and the punishment of a soldier is such a punishment as shall be found in the discretion of a general, district, or garrison court martial. I have before submitted to the Committee

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Sir  
H. Thring,  
K.C.B.



Sir  
H. Thring,  
K.C.B.  
2 July 1878.

Chairman—continued.

mittee that where an officer commits an offence like perjury, there is no reason why he should not be subjected to the same sort of punishment as a soldier; and therefore I have not drawn a distinction between them here.

1086. That means that he is liable to imprisonment for two years, does it not?—There is the possibility of imprisonment for two years.

1087. It is a very much lighter punishment than he would get in a civil court, is it not?—That may be so.

Mr. Campbell-Bannerman.

1088. Is it the case that, under Sub-section 1, a man who is not subject to military law who commits an offence, will be liable for that offence to a greater punishment than a person under Sub-section 2, who is subject to military law?—It is quite possible.

Chairman.

1089. I suppose that it is necessary to keep this as a military offence, although one would suppose that perjury, wherever it was possible to get at a civil court, was essentially a crime which should be punished by the regular civil tribunals, and that it was not at all desirable to refer such a crime as perjury to a court martial?—It is quite true; but I suppose that in the case of a military witness, you will allow that there are great difficulties attending a prosecution for perjury in the civil courts, and I presume that they want a more summary mode. They have to prove the materiality of the evidence and a number of things. (Mr. O'Dowd.) Under military law we only try a man for perjury when it is committed before a court martial.

1090. (To Sir Henry Thring.) You mean that the difficulty would be that a regiment might be moved?—A regiment might be moved; they would have to call a great number of military witnesses, and it is a very expensive process; and I presume it is more convenient to punish it.

1091. (To Mr. O'Dowd.) Is it common to try men for perjury before courts martial?—It is not of very infrequent occurrence that a man is arraigned before a court martial for perjury committed before another court martial.

1092. What sentence do they usually pass for perjury?—I do not think they pass a very severe sentence upon a man; I should think that they would give him about three months' imprisonment if he had a good character beforehand.

Sir Alexander Gordon.

1093. Can you lay before the Committee the number of soldiers who have been tried for perjury within the last five years?—I say that unfortunately we have not infrequently cases of perjury, and I think that the punishment for perjury is not so severe as the punishment which is usually given for a military offence, if the man's character is not a bad one; but of course any observation that I make of that kind is necessarily liable to a good deal of correction. It would take a long time, I think, to go through the five years; I do not think the offences are so registered. I read a certain number of courts martial in the office, and I know that when I go to the office any day and find 20 or 30 courts martial to read, amongst them there are one or two cases of perjury.

Sir Alexander Gordon—continued.

1094. Are you aware that not many years ago courts martial were not allowed to try soldiers for perjury?—I believe it was so at one time.

Mr. Campbell-Bannerman.

1095. And then they were dealt with by the civil courts?—Yes.

Chairman.

1096. (To Sir Henry Thring.) Is the first sub-section necessary?—Yes, I believe it is.

1097. Is it not the law that a false oath given before anybody authorised to administer an oath, whether a magistrate or anybody else, is perjury?—At common law that is so; but this Act is to travel all over the world, and we expressly want to punish such offences according to the law of the country where they are committed.

1098. It is very proper, is it not, that a case of perjury should go for trial to the highest class of court martial?—Quite so.

1099. Surely the offence of perjury ought to be punishable by court martial when the regiment is out of the Queen's dominions. For instance, supposing that an expeditionary force is cantoned out of the Queen's dominions, in Asia Minor or elsewhere, and that it is there for some time, and that perjury is committed before a court martial by a civilian, then you ought to have power to send that man to the next English tribunal to be tried?—I should submit that it is so. "If he is not subject to military law he shall be guilty of the offence of perjury," (that will extend to Asia Minor or anywhere else), "or, of the offence, by whatever name called in the part of Her Majesty's dominions in which the offence was committed, which, if committed in England, would be perjury." Therefore if he is in India or the Cape, where Dutch law prevails, or used to prevail, he is not to be sent home, but he is to be considered guilty of an offence analogous to perjury, but which will not be called perjury. I will take care to explain fully in the clause that the offence is made triable if committed abroad.

1100. Have you any remarks to make with regard to Clause 65?—Clause 65 supplies what I believe to be an omission. There is no provision made in the present Mutiny Act and Articles of War for insane prisoners, and therefore I thought it better to take the one that we have in the Naval Discipline Act. Practically, of course, they must be dealt with in this way.

1101. Is Clause 66 necessary?—That was only put in on the ground that they would have no power to get rid of a civilian unless we gave the statutory power. A court martial is not a court of record, and it is not a court at all in law, and that has given rise to a great deal of difficulty as to their proceedings.

1102. What objection would there be to giving to a court martial all the powers of a court of record?—With respect to courts martial, I submit to the Committee for their consideration, that a court martial has never been considered a court at all. It is an instrument for informing the confirming officer of the guilt or the absence of guilt in a prisoner, its proceedings being absolutely invalid and void, unless they are confirmed by the confirming officer. Courts martial have none of the

*Chairman—continued.*

the attributes of a court; they give no judgment, and when their finding is confirmed, it really is not their judgment, but it is in law the finding of the confirming officer. Therefore I submit that it is a question whether we ought or ought not to alter the whole legal view of the matter by making a court martial a court of record.

1103. But in all these clauses that we have been recently dealing with, have we not been treating a court martial exactly as if it were an ordinary criminal court, in reference to the evidence and everything else?—Technically, it is, in my opinion, more in the nature of a jury than of a court. I am not so pedantic as to wish it not to be called a court martial, but technically it is not a court, because technically a court in the sense in which we are talking of a court, is a court of record.

1104. You are doubtless aware that it is a familiar phrase in many Acts of Parliament that such and such an authority shall have all the powers of a court of record?—Certainly.

1105. My phrase, that it shall have such powers as a court of record, would not make it a court of record, but would give it the powers which a court of record has, which is a different thing altogether?—You constantly do it with regard to Commissions; you give them the powers of a court of record with respect to the summoning of witnesses and the production of documents, and sometimes with respect to the commission for contempt.

1106. What objection is there to giving a court martial the powers which would be conferred by such a phrase as “giving such a court all the powers of a court of record”?—When I draw clauses creating a Commission I state that, with respect to the summoning of witnesses and the production of evidence, and also if it is a very important Commission with respect to punishing for contempt, they shall have all the powers of a court of record. We have given courts martial the power of summoning witnesses and of administering oaths, and the power to clear the court. In Clause 68 we give the power of punishing for contempt; so that in fact I have done exactly the same as is usually done where you give the powers of a court of record, so far as it is essential, without constituting the tribunal a court of record.

*Mr. Campbell-Bannerman.*

1107. I see that the 162nd Article of War lays down a good many rules for the conduct of the court: that members are to behave with decency, and are to take their seats according to rank, and give their votes in certain order, and so on; and out of the several provisions you pick this one, in order to give it statutory effect in this Bill: that the president shall clear the court on any discussion; the other provisions being relegated, as I understand, to the Articles of War or Queen's Regulations?—With respect to the rule, as to behaving with decency, of course that need not be put in a Statute. But what particular reason is there for giving a higher position to this one provision than to the others?—It may not be necessary, but the reason is this: supposing that I, being a civilian, was before a court martial, and they said, “Clear the court,” and I resisted the clearing of the court, I could

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*Mr. Campbell-Bannerman—continued.*

not be summarily ejected and summarily punished, but the only thing that could be done would be to bring an action for trespass. I thought it desirable to give, as it is done in the case of the inferior judges, a power to clear the court. Assuming that that is of sufficient consequence, it must be done by Statute. I do not think that the matter is a very important one, because I do not suppose such an order is often required.

*Chairman.*

1108. It seems to me that we are in this dilemma: either a court martial is a court or it is not; if it is not a court, nobody has a right to be there, and it is not open to the public, but it is a mere private assembly; whereas, if it is a court, you have the power to clear it; and it seems to me contrary to the whole framework of this Bill to say that a court martial is not a court?—I believe that I have not altered the law one tittle. I can only tell you the result of the impression made upon my mind by the whole law, and that is that it is not a court in the technical or ordinary sense.

1109. Then, if it is not a court, what right has anybody to be there?—Because we have given it the power to try, power to summon witnesses, and power to make a finding in the same way as a jury.

*Mr. Merewether.*

1110. It is possible, I suppose, that the court may desire to exclude the prisoner's witnesses?—Yes. I think it is correct, but as for being certain upon a question upon which you find so little aid, either from books or in any other shape, I do not pretend to be so.

*Chairman.*

1111. My great object was to impress upon the court martial as far as possible that they were a court; because, if they are to be told that they are not a court, it seems to me that we are legislating in vain?—I respectfully submit that that is not so. The real truth is this: you will find that the Mutiny Act expressly provides that the finding of a court martial, and indeed all its proceedings, have no validity until they are confirmed by the confirming officer. If they were a court, their sentence would be valid, although there might be an appeal to the confirming officer, but I understand that their proceedings have no validity whatever until the confirming officer has either approved or disapproved of them.

1112. If you look at the 161st Article of War, it says, “No person shall use menacing words, signs, or gestures, in presence of a court martial; or shall cause any disorder or riot, so as to disturb the proceedings of the court, or shall commit any other contempt of the said court, under the penalty, if an officer or soldier, of being punished at the discretion of the said court or by a court of superior power, and if a civilian, of being taken before a civil magistrate to be punished according to law.” I do not see how he could be punished according to law if he had committed a contempt of that which is not a court?—I say without hesitation, that the last part of that Article of War is obviously *ultra vires*. The Queen can only make Articles of War for the army, and I should submit that that, so far as respects civilians, is entirely *ultra vires*.

1113. I assume that a court martial is a court,

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*Chairman—continued.*

and, if it be a court, a contempt of that court can be punished, can it not?—With great deference, that is scarcely the legal way of putting it. When sitting at petty sessions, as most of us have done, we are called a court of petty sessions, but we very well know, as magistrates, that we cannot punish for contempt of court; we are not a court. The court of quarter sessions is, I think, the lowest common law court of record, and of course there are the superior courts; but it is very unusual indeed, when you constitute a court of inferior jurisdiction to make it a court of record.

1114. As I understand, your contention is, that a court martial is exactly what I had supposed a court of inquiry to be. I always understood a court of inquiry to be an informal body, appointed to inform a superior authority upon which information he will act; but that a court of inquiry has no real jurisdiction; it simply makes a report upon which the superior authority acts?—I may have expressed myself badly, but that is not my contention at all. The word "court" in itself, of course, as we all know, has no meaning at all, because a court may be a judicial court, or it may be the Queen's Court, or it may be something else.

1115. But you say that the authority of a court martial is *nil*, because none of its decisions can be carried into effect, except by the superior authority; and that therefore the court itself, or whatever else you may choose to call it, is nothing; if that be so, it is nothing more than a court of inquiry?—I fear I have not made myself understood. A court of inquiry has no power to summon witnesses, no power to recommend a punishment, no power to examine upon oath, and no power, in fact, to try at all. A court martial has all these attributes of a court; it can have a prisoner arraigned before it; it can find whether he is guilty or not guilty; it can examine witnesses on oath; it can punish for contempt, and it is perjury to forswear yourself before it. What I said was, that it was not a court in the sense in which we usually employ the word, and its sentence is not the sentence of the court, but the sentence of the confirming officer. If you separate the court into a judge and jury, then I should say that the functions of a court martial more resemble the jury functions of a court than the judicial functions of a court.

1116. Then it seems to me that the whole of the military law has hitherto been founded upon an entire error, because I find all through the Mutiny Act that there are certain punishments to be awarded by courts martial, and certainly the authors of the Mutiny Act had a notion that a court martial could award a punishment?—Technically that is not so; every officer will tell you that he is aware when he sits on a court martial, that until the sentence is confirmed by the confirming officer, it has no power at all.

*Mr. Hayter.*

1117. The confirming officer has no power to increase the sentence?—He has no power to increase the sentence, but he has power to diminish it, or remit it altogether.

*Chairman.*

1118. By the 6th section of the Mutiny Act, "Every officer authorised to convene courts martial may confirm and cause to be executed, or may suspend, mitigate, or remit the whole or

*Chairman—continued.*

any unexpired portion of the sentence of any court martial convened by him;" there the sentence is treated as the sentence of the court martial, but the convening officer has the power of remitting the sentence, just as the Crown has the power of pardoning in the case of a sentence passed by a judge and jury at the assizes; but would it be correct to say that the judge and jury at assizes have no power to pass a sentence?—The judge and jury have, but the jury, in my opinion, has no power to pass a sentence.

*Colonel Loyd Lindsay.*

1119. The 20th Article of War says: "Every commissioned officer sentenced to be kept in penal servitude, on such sentence being confirmed, shall cease to belong to our service:" that lays down, as I always understood, the necessity before any court can carry its sentence into execution, that that sentence should be confirmed; and until it is confirmed by the authority of the Crown, no sentence can be carried into execution; in fact it is not a sentence until it is confirmed?—Quite so; the question as to the jurisdiction of a court martial arises on the acquittal of a prisoner. When a court martial acquits a prisoner, the prisoner is not at once discharged, but the sentence has to be confirmed by the confirming officer, I believe, in every case.

*Chairman.*

1120. (To Mr. O'Dowd.) My impression has been that the main object of the Mutiny Act was to create a court military, which did not legally exist in this country until the time of the Revolution, when military law was placed upon a statutory footing by the Petition of Right: my honourable friend the Member for Northampton has called my attention to the case of "Grant v. Gould" (1 H. B., p. 100), in which Lord Loughborough says, "The army being established by the authority of the Legislature, it is an indispensable requisite that there should be order and discipline kept up in it, and that the persons who compose the army for all offences in their military capacity should be subject to trial by their officers; that has induced the absolute necessity of a Mutiny Act accompanying the army. One object of that Act is to provide for the army, but there is a much greater cause for the existence of that Act, viz., the preservation of the peace and safety of the kingdom. The object, therefore, is to create a court" (we know very well what the meaning of that phrase is, because the Crown cannot create a court; nothing but the authority of the Legislature can create a court) "invested with authority to try those who are part of the army in all their different descriptions of officers and soldiers, limited to breaches of military duty;" have you any observations to make upon this subject?—All the authorities are agreed upon one point, and that is, that the proceedings of courts martial are of no force whatever excepting so far as they are confirmed by the legalised authority. That, I think, is a question upon which there is no doubt. On the other hand, the confirming authority cannot confirm anything that the court has not done.

*The Judge Advocate General.*

1121. You consider that the confirming officer is part of the court?—Yes, that is the general view.

1122. (To

*Chairman.*

1122. (To Sir Henry Thring.) It would appear that you have made careful provision that all the witnesses shall be heard; careful provision for challenges of the trying authority, and you have made all the provisions which apply to a court; and then you say that those are not the people to pass the sentence, but that the sentence should be passed by a man who has not heard the witnesses, and who is subject to none of the safeguards by which you surround the court?—I have given the express power that the Article of War now gives them, that they may prevent any contempt or any impropriety being committed. It is a mere technical question whether their judgment is or is not the judgment of a court. I have given them all the attributes of a court, except that I have not stated that they are a court of record; and therefore I say that they want a special power to commit for contempt. Supposing that I struck out these clauses, and said that they were a court of record, the only effect of that would be that every soldier would have to consider what the power of a court of record was, and also that I should get into the technical difficulty of saying that the sentence of a court of record should not be valid until it was confirmed.

*Mr. Merewether.*

1123. Allow me to read to you the 8th section of the Mutiny Act, by which all persons, both soldiers and civilians, are bound: "Every general court martial shall have power to sentence any officer or soldier to suffer death, penal servitude, imprisonment, forfeiture of pay or pension, or any other punishment which shall accord with the usage of the service. No sentence of death by a court martial shall pass unless two-thirds at least of the officers present shall concur therein; no sentence of penal servitude shall be for a period of less than five years; and no sentence of imprisonment shall be for a period longer than two years;" there is nothing there about confirming; that is found in the 12th section. In the case of a detachment general court martial, the proviso is, "That no sentence of any such court martial shall be executed until the general commanding the army of which such detachment or portion forms part, shall have approved and confirmed the same." Surely there is a difference between the powers of a detachment general court martial under Section 12, and the very general powers of a general court martial under Section 8?—I may have used the term wrongly, but I consider "sentence" to mean a sentence such as a judge gives, which can only be upset for illegality or an appeal. On the other hand, the sentence or the finding of a court martial must in every case, before it acquire any validity, be confirmed by a certain confirming authority.

*Colonel Mure.*

1124. The 8th section of the Mutiny Act does not say that no sentence of death by a court martial shall "be executed," but that no sentence of death by a court martial shall "pass" unless two-thirds at least of the officers present shall concur therein?—That is so.

*Mr. Merewether.*

1125. But the Crown says: "I shall not allow any of these sentences to be carried out unless I by my officers confirm the same"?—Yes.

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*Mr. Merewether—continued.*

1126. The court can pass sentence, but for some reason that sentence may not be allowed by the Sovereign to be executed?—If you think it better to call that a sentence which is not valid until it is confirmed, and to call the body finding that sentence a court, it can be done. The general application of the word "sentence," however, is a final judicial sentence, and that can only be given by the person who has the power from Her Majesty or by law to give sentence; and that sentence is executed unless it is reversed on appeal. Now, as I am instructed, the sentence of a court martial is not valid until it has been confirmed, and therefore I thought it was not properly speaking a sentence, although I am aware, of course, that it is called a sentence.

1127. There is this further distinction; that in the 8th section there is nothing about confirmation; that is left to the prerogative; but in the 12th section there is a legislative proviso that the sentence shall not be executed until it has been approved and confirmed?—Do you think that the officers or soldiers would understand more clearly the enactment that the court should have the powers of a court of record, or the proposition that if people misbehaved themselves you might punish them, and that the court might swear witnesses? I have only specified the powers instead of putting them in what I should call a pedantic and unintelligible form.

*Chairman.*

1128. Have you any remarks to make with regard to Clause 67?—I believe that clause to be unnecessary, but I put it in here because it is in the Mutiny Act. I should have thought that it was within the power of the government of any presidency to suspend the proceedings of any court martial, but that I cannot answer.

1129. What have you to say with regard to Clause 68?—Clause 68 embodies the provisions of the 161st Article of War with relation to contempt of court. In the latter part of the clause I put, instead of the words "being taken before a civil magistrate to be punished according to law," that he shall be committed in the same manner as if he had been guilty of contempt of a superior court.

*Sir Alexander Gordon.*

1130. With regard to Sub-section 2 of Clause 68, do I understand aright, that a civilian who is guilty of contempt of court may be convicted upon the certificate of the president without having any opportunity of defending himself?—Yes, that is so; you would degrade your court martial much below what I had intended to do if the certificate of the president of a court martial, that a man has behaved with contempt to him, is not sufficient evidence.

1131. But is not the person concerned to have the opportunity of contradicting the charge?—No, because you being the president of the court martial say to me: "You have been guilty of gross contempt." It is not to be supposed that you would certify that I had been guilty of contempt of court, unless I had been so.

1132. Have not cases occurred where a committal has been quashed, simply because the person accused has not been allowed to defend himself?—Supposing that you committed a contempt of one of the courts at Westminster you are sent off to prison at once, and the judge may keep

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keep you in prison for contempt. All I put here is that if the president of a body (as we are doubtful as to what is a court) so important as a court martial, certifies that a civilian has committed contempt, that shall be evidence of his having committed that contempt, and thereupon he shall be sent to prison by a civil court. Supposing that I go in to a general court martial, and that I am insolent to the officers there and throw my hat at them, or commit a gross insult before the whole assembly, is it to be tolerated that a general officer is to be obliged to take out a summons against me for a common assault.

1133. A stranger goes into a court martial and listens to what goes on; the presidents of court martial are not always men of the mildest temper or of the best judgment; and after that stranger has gone away and left the room he is liable to have a certificate given that he has been guilty of contempt of court, although he may not be aware of anything that he has done; do you think that is just?—The fact is, that a civilian now cannot be punished at all for it; but the question is whether in a general court martial, which may be trying a case of life or death of the utmost possible importance that any court can try, a civilian is to come there and insult those officers without liability to punishment; and I have only given the same powers as ordinary courts have in England.

*Chairman.*

1134. In a court of petty sessions, for instance, supposing that a contempt is committed there, how is it punished?—You do not punish; you tell the policeman to take the man out.

Colonel J. H. ROCHE, re-called; and further Examined.

Colonel  
Roche,  
—

*Chairman.*

1140. WHAT should you say as to giving to a court martial the power of amending the charge?—In practice a court martial is not empowered to alter a charge after the prisoner has pleaded. I think the present proposal is objectionable, and that it would be better in case of error in the charge, for the court to refer to the convening officer who prefers the charge.

1141. By whom may the charge be amended before plea?—It may be amended if it is a slight error, by the court; but even in the case of slight errors it is usual to refer to the convening officer. I do not say that the proceedings would

*Chairman*—continued.

1135. But have they no power corresponding to this?—No, none at all at petty sessions.

*Mr. Merewether.*

1136. They do lock them up until the end of the day, I believe?—Yes, but they have no power to do it.

*Colonel Mure.*

1137. It is quite evident that now a man has to be taken before the civil magistrates and punished according to law; but is it the practice at this moment that when a civilian is brought up for contempt of court before a civil magistrate, the word of the president of the court is taken, and that the civilian is not heard?—If I am guilty of contempt before a court of record, the practice is that I am there and then sent off to prison; I say that the Article of War is of no use, it is *ultra vires*; and the question for the Committee is simply this, whether they will or will not allow civilians to be insolent to courts martial without any punishment at all.

*Chairman.*

1138. Have you any observations to make with regard to Clause 69?—That merely gives power to amend the charge.

1139. Those are general powers which do not exist at present, I suppose?—I fancy it is doubtful. This power is of the smallest possible dimensions. It is a power given in every criminal Act that I ever saw, and it is much for the interest of a soldier that instead of a thing being referred backwards and forwards, the court martial may simply, for instance, put their pens through a date, and substitute another date.

*Chairman*—continued.

be found illegal if a court had amended the charge before plea, but even there it is usual to refer to the convening officer if any inaccuracy is discovered.

*Mr. Merewether.*

1142. Do you see any objection to referring it back to the convening officer for amendment?—None whatever.

Sir *Alexander Gordon.*

1143. Might not that cause delay in India and remote parts of the world?—It might in some cases.

Sir HENRY THRING, K.C.B., re-called; and further Examined.

*Chairman.*

Sir  
H. Thring,  
K.C.B.  
—

1144. HAVE you any observations to make with regard to Clause 70?—Clause 70 is a consequence of the mode in which I have grouped the offences. It is of course essential that a court martial may find a man guilty of an offence of a less description if he is indicted for one of the higher class.

1145. Those are enactments which have been made in the civil law?—Yes.

*Mr. Merewether.*

1146. It is clear that if a man was tried *coram non iudice*, he could be tried over again?—Yes.

*Chairman.*

1147. Clause 71 is in the present Mutiny Act, is it not?—Yes.

Mr. JAMES CORNELIUS O'DOWD, re-called; and further Examined.

*Chairman.*

1148. THERE is nothing that can be called an appeal from a sentence after it is confirmed, is there?—No.

*Major O'Beirne.*

1149. Do you not think it is desirable that there should be a court of appeal independent of the Horse Guards and the War Office, to which court of appeal the sentences of courts martial might be deferred?—I think it is highly desirable that there should be some tribunal, which I should rather call a court of review perhaps than a court of appeal, which should be able to settle, and to settle decisively as to the legality of proceedings of courts martial.

*Chairman.*

1150. Are you speaking merely of questions of law or of questions of fact, because it would make a very material difference?—I am speaking more of questions of law; for instance, supposing that a man was tried, and that he was found guilty upon totally illegal evidence, say upon hearsay evidence, or that he was restricted in his defence, or that the court martial found him guilty when they really meant to acquit him, which sometimes occurs according to form; I think in such cases as that, it is very desirable that there should be something in the nature of a court of review to correct illegalities. As you are aware, the civil courts of Westminster Hall will not take cognizance of any military proceeding so long as there is no question of the jurisdiction of the court that deals with it.

*The Judge Advocate General.*

1151. What is the present practice?—The present practice is that the proceedings of every general court martial at home are taken by the Judge Advocate General to the Queen; he, having read them, and satisfied himself that the proceedings are legal, advises Her Majesty to confirm them. But the great majority of the cases which occur are those of district and garrison courts martial, of which there are seven or eight thousand in every year; they come to our office, and they are read either by myself or by one of my military colleagues; and whenever we see in any one of them what we consider to be an illegality, we acquaint the confirming officer of that illegality, and advise him of the manner in which it affects the proceedings, whether it causes them to fall to the ground altogether, or in what respect it invalidates them. I have no reason to suppose that our opinions are not acted upon and respected; but in a case which occurred a few years ago, the whole question as to our competence to settle these matters decisively was raised. I have a memorandum upon the subject, which, perhaps, I may read to the Committee. There was a certain private soldier tried on a charge of having lost by neglect, or designedly made away with a ramrod; he was tried by a regimental court martial. The charge disclosed a military offence under the 102nd Article of War only because of the averment that the loss was occasioned through the neglect or the design of the prisoner. The court found the prisoner guilty of the charge, with the exception.

*The Judge Advocate General—continued.*

*Mr. O'Dowd.*

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tion of the words "by neglect, or designedly made away with," that is to say, they found him guilty of having lost a ramrod, but from some cause other than neglect or design. When the soldier came to take his discharge, the commanding officer of the regiment found this conviction upon the regimental records; the man, who was of good character, had incurred by this conviction the forfeiture of certain good-conduct pay. The commanding officer wrote to the Judge Advocate General (I was acting Judge Advocate General at the time myself), and on reviewing the facts, it appeared to me that this man had a right to have the conviction entered as an acquittal, which of course would have freed him from all the consequences of the loss of his good-conduct pay and pension. It appeared to me that the court rightly appreciated the facts of the case, but that they misapprehended their duty in dealing with the facts; instead of acquitting the man they found him guilty, with a certain qualification; thereupon I wrote to the commanding officer of the regiment, stating that I quite concurred with him that the conviction of this soldier should be entered as an acquittal, that it should be quashed in fact. As it affected certain financial arrangements of the War Office, it was disagreeable I presume to the War Office; they had to pay him some arrears of pay extending over a certain number of years, and a case was laid before the law officers of the Crown, which, in effect was this: Whether the letter written by me in the name, and with the authority of the Judge Advocate General, was to be regarded as a decision which the War Office was bound to respect, or whether it was simply advice which they might disregard or not as they thought most convenient. The law officers gave it as their opinion, that it was no decision, that the Judge Advocate General was in no sense of the word a judge, but merely a person whose advice might be sought, and whose advice of course was to be treated with a certain amount of deference, but that it was in no sense binding; and in that particular case, this soldier who was neither morally nor legally guilty, still by the action of the War Office, incurred all the consequences of a conviction.

*Mr. Campbell-Bannerman.*

1152. What was the date of that?—November 1872.

1153. When you say that the opinion which you gave was disagreeable to the War Office, that is only your inference, I presume?—Yes; the only reason, I imagine, which would lead the authorities to abet an act of injustice would be that there was some inconvenience arising.

1154. Do you think they were so anxious to secure the money?—I rather think it was a question of difficulty about keeping accounts.

*Chairman.*

1155. I suppose there can be no doubt, in point of fact, that at present the Judge Advocate General's office is not in law a judicial office?—That is so settled.

1156. The Judge Advocate General is an assessor, as it were, without legal authority, is he not?

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Mr. O'Dowd.

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not?—There have been great differences of opinion about that. The law officers settled it in the case which I have just mentioned in the way which I have described; but certain Judge Advocate Generals have since given their views about it, and I think that there is rather a conflict of opinion as to whether the Judge Advocate General is, or is not, a judicial person; but, no doubt the law officers, whom one must regard as the final authority in cases of this kind, have said that he is not a judicial person.

1157. I think that Lord Cranworth pointed out at the time of the Crawley Court Martial that the Judge Advocate General was *Judex Advocatus*; a judge called in as an assessor?—No doubt that is a correct interpretation. The opinion of the law officers was given upon the case which I have just mentioned.

Mr. Merewether.

1158. And since then a Judge Advocate General has expressed a different opinion?—That is so.

Colonel Mure.

1159. At whose instance was the case referred to the law officers of the Crown?—By the War Office.

Chairman.

1160. Supposing that the confirming officer confirms a sentence, and that the Judge Advocate General pronounces the sentence not to be legal, do you consider that it rests with the military authorities or the Secretary of State for War to carry out that sentence or not as they please?—Legally it is so.

1161. What is the sort of appellate jurisdiction, if there is to be one, that you would recommend; would you make the Judge Advocate General's office a real appellate tribunal?—I would not call it an appellate tribunal, because, of course, an appellate tribunal would mean a tribunal to which a person aggrieved would have recourse from his own action, but I would rather call it a court of review; because most of these private soldiers who may suffer from injustice are quite unaware of their rights; they are not very enlightened as to the law of the case, and if the Judge Advocate General was only to interfere in the cases in which a soldier might appeal, I am afraid that it would become very little more than a nullity.

Colonel Mure.

1162. In the case of private soldiers, who you very properly say have very little knowledge in such matters, in whom would you allow the power of appeal to rest?—I would rather avoid calling it a court of appeal for the reason I have just stated; but I think I would leave the present practice very much as it is.

Chairman.

1163. Only you would like to have a statutory confirmation of the authority of the Judge Advocate General?—I would like that when the Judge Advocate General, or whoever is considered the proper authority, pronounces a trial to be illegal, that should be a decision having legal effect, and not merely an opinion which may or may not be acted upon.

Colonel Mure.

1164. Then you would give the Judge Advocate General a power of review?—I think so.

1165. You say that you would principally refer points of law to him; would you not also refer points of evidence to him; do not cases from time to time arise on courts-martial, as you have already pointed out, in which matters of evidence and of fact are in doubt?—I would call matters of evidence matters of law; for instance, in the conviction of a man upon evidence which was not legal evidence, I should say that his conviction was not according to law.

1166. There are many new regulations in this Bill which, if abused or evaded, would make the proceedings of the court irregular; would you also allow an appeal in regard to the legality of the proceedings of a court martial?—I think I would let the proceedings of every court come to be read, and judged upon every point.

Major O'Beirne.

1167. Have you ever known cases within your own experience, or have there been cases in the time of any of your predecessors, where the military authorities and the War Office have set aside the decision of the Judge Advocate General, or his deputy?—I have found out entirely accidentally cases where the Judge Advocate General's opinion has not been acted upon by the confirming officer; but I do not go to the extent of saying that a prisoner has ever been detained in custody whose trial the Judge Advocate General pronounced illegal.

Chairman.

1168. How do you mean that you have known cases in which the Judge Advocate General's opinion has not been acted upon?—I have found one or two cases rather accidentally; one which occurred in India was rather a curious case. An officer was tried by a court martial on certain charges, and he was sentenced to be cashiered, but the sentence was commuted for a reprimand; when his regiment came home, he did not like to be even under the slur of a reprimand, and he submitted the court martial to his Royal Highness the Field Marshal Commanding in Chief. His Royal Highness was of opinion that there were certain points in the court martial which made the trial objectionable, and he referred it to me as I happened to be acting Judge Advocate General at the time. Amongst the points which his Royal Highness considered bore hardly upon this officer was this: That the Deputy Judge Advocate at the trial, instead of observing the strictly impartial position which he is enjoined to do by the Queen's Regulations, had virtually become identified with the prosecution, had taken an active part in it, had advised the prosecution, and in fact, conducted the examination of some of the witnesses in a manner which only a prosecutor would do. Upon reading the proceedings, I entirely concurred with his Royal Highness's opinion in that respect. A letter was written to the Commander in Chief in India, pointing out these defects, and his Royal Highness advised Her Majesty to give a full pardon to this officer. It happened quite accidentally some months afterwards, that the officer who acted as Deputy

*Chairman*—continued.

Deputy Judge Advocate paid me a visit, and brought me a letter of introduction from a friend at the bar; in the course of conversation, I alluded to this case, and I found that he knew nothing about the letter which had been written; in point of fact, the letter which was sent to India, and supposed to be specially addressed to him for the purpose of guiding him as to the impartial position that he ought to preserve as Deputy Judge Advocate, had never been communicated to him; and as far as I could make out, it was never communicated to anybody.

1169. To whom was the letter sent?—They will tell you at the Horse Guards. I presume that it was sent to the Commander in Chief in India.

1170. What you would desire would be that there should be some more binding effect given to the opinion expressed by the Judge Advocate General's department upon the revision of courts martial?—I think so. There out to be an independent tribunal, by which I mean a tribunal independent of the military authorities, whose opinion upon matters of law should be final, and regarded as a decision to be acted upon.

*Sir Henry Wilmot.*

1171. You would give a power to the Judge Advocate General, which he does not now possess, of enforcing his views?—I think that that would very much meet the case.

*Chairman.*

1172. Would you apply that also to the severity of sentences as well as to the matter of the actual sentence itself?—I think not; I think that sentences are a matter of discipline, and that so long as they are within the limits of the law they should be left to the military authorities.

*Mr. Merewether.*

1173. Supposing a court martial gives a sentence upon a view of the law which does not apply to that offence, what then?—That would be illegal; but with regard to the propriety of particular sentences that were not in excess of what the law allows, I should not be disposed to give the Judge Advocate General any power; though, so far as my opinion goes, I think sentences are very often unduly severe.

*Chairman.*

1174. Does the Judge Advocate General offer suggestions for the mitigation of sentences?—Not generally.

*Colonel Mure.*

1175. Does he do it informally?—A case might arise in which I should address a private letter to one of my friends at the Horse Guards, and say that it was a hard case, but I am very chary about doing it.

*Colonel Mure*—continued.

1176. When you do that, is it noticed?—It is always noticed, and often acted upon.

*General Shute.*

1177. Do you think that, if the Judge Advocate General had that power, it would be desirable that the office of Judge Advocate General should be a political appointment, and that he should be removable with the Government?—I think that a judge or person exercising judicial functions should be a permanent officer; but I am hardly in a position to give an opinion upon that point.

1178. Do you not think that he should be in the position of an acting judge, independent of party and politics?—It is hardly a question upon which I have the right to give an opinion; it is a large political question.

1179. Do you not think that he should be selected as having had considerable practice in the criminal courts of law?—Experience is a good qualification, undoubtedly.

1180. Are you aware that a former Judge Advocate lost sundry votes at a borough election because he advocated men being marked "B. C."?—I never heard of the case.

*Mr. Merewether.*

1181. As I understand you, you would be satisfied if the view of a recent Judge Advocate General that the opinion of the Judge Advocate General is binding (which is supposed to be wrong now) was adopted by this Committee?—If the new Act gave effect to that opinion, I think it would be quite satisfactory.

1182. I suppose you could not tell us what the opinion was, except generally, that some recent Judge Advocate General was of opinion that he had that power?—I believe it is a confidential document.

1183. You would be satisfied if he had that power which it was assumed by the law officers of the Crown that he had not?—Quite so.

*General Shute.*

1184. I am not sure whether you were in the Judge Advocate General's department at the time, but are you aware that two prisoners were tried by a general court martial at Cork on a charge of Fenianism, and that the proceedings in the first case were quashed, Lord Strathnairn, who was then commanding in Ireland, differing; and that, on the second court martial, on which a prisoner was tried on precisely the same charge, and the same evidence submitted to the law officers of the Crown, the finding of the court, and the sentence, which was death, was approved, being commuted to penal servitude?—That all occurred before my time. I became Deputy Judge Advocate General in 1869. I had no official knowledge of that case.

Sir HENRY THRING, K.C.B., re-called; and further Examined.

*Chairman.*

1185. Do you see any objection to making a provision in the Bill for giving force to the recommendation of the Judge Advocate General, the present situation of things being that the veto of the Judge Advocate General may be  
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*Chairman*—continued.

passed over, as it were?—I should have thought that it ought to be made a question of administration, and not a statutory question. As I understand the case, the present power is not to quash the proceedings, but the Judge Advocate

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cate General in fact advises that certain proceedings should be disregarded. Giving the Judge Advocate General a statutory power to quash the proceedings, which I presume means to entirely destroy them, might have an effect which I am not prepared for; and therefore I should not like to answer the question unless I had much more knowledge and much more experience.

*Colonel Loyd Lindsay.*

1186. Would not the effect of your proposal be to make the final court of review a less important court than that which now exists?—In my idea it does not exist at present; I should like to see it exist.

1187. But the court is the law officers of the Crown?—They are not a court at all; they are merely like the Judge Advocate General's Department.

1188. They are the advisers at present of the War Office and of the Horse Guards, are they not?—Yes, and of the whole Government.

1189. If your proposal was carried out, they would no longer be so, because then the adviser would be the Judge Advocate General?—Theoretically they are the advisers, but I do not think that a question of military law is put to the law officers once in three or four years.

*Chairman.*

1190. The Judge Advocate General's Office would be an office constantly dealing with these matters; whereas it would be quite exceptional when these matters were sent to the law officers?—Quite so. In fact, as I understand the case, the Judge Advocate General is to the War Office very much what the Attorney General and Solicitor General are to the Cabinet generally.

1191. You could not work such a mass of business as the military business of courts martial regularly by means of the law officers, could you?—No, you could not have a couple of hundred of courts martial in a week dealt with by the Attorney General or the Solicitor General.

*Mr. Herschell.*

1192. (To Mr. O'Dowd). You have told us that the military authorities referred to the law officers the question whether they were bound by the opinion of the Judge Advocate General, and that, being advised that they were not, they did not act upon it; do you know whether, after that they referred the question which the Judge Advocate General had decided to the law officers, or whether they acted themselves without reference?—I have no reason to suppose that the substantial question was overruled on the advice of the law officers.

*Mr. Merewether.*

1193. They acted on the sentence?—Yes.

*Sir Alexander Gordon.*

1194. In what part of the Bill before us is Clause 89 of the Mutiny Act embodied?—I should think that Sir Henry Thring would put it in the part relating to civilians; I should think it would not come into discipline.

*The Judge Advocate General.*

1195. (To Sir Henry Thring). Is Clause 73

*The Judge Advocate General*—continued.

any variation of the existing law?—That is intended to be a reproduction of the existing law.

*Mr. Hayter.*

1196. Is there any reason for leaving out the word "garrison"?—I thought there was no use in continuing the word "garrison."

*Mr. Merewether.*

1197. Sub-section 1 raises the question as to whether the proceedings shall be valid?—Yes; I first of all put in "the sentence," and I was advised by the Judge Advocate General's office that it ought to be "the proceedings."

*Sir Alexander Gordon.*

1198. I observe that the term "Field Court Martial" is used; that is a new term, is it not?—Yes, I understood that the Committee had approved of that term being adopted; it was considered as a more convenient one than having "Detachment" and "Detachment General," and as no Member suggested a better word, therefore they adhered to the word in the text.

*The Judge Advocate General.*

1199. You have got "Detachment Court Martial" in the preceding sub-section?—Yes, I have simply altered the name.

*Sir Alexander Gordon.*

1200. Sub-section 9 of Clause 73 is as follows: "A finding opinion or sentence given by any court martial, and signed by the president thereof, shall not be revised more than once, nor shall any additional evidence in respect of any charge on which the prisoner then stands arraigned, be received by the court on any revision." What is the meaning of "then stands arraigned;" because I imagine that he can be only arraigned on the original charge?—It is explained by "Simmons on Courts Martial," that you may give evidence in respect of previous convictions, but that you cannot add to the evidence in respect of the charge on which he is arraigned. In other words, supposing that I am arraigned for disobedience to lawful command, they cannot bring any fresh evidence on the charge of disobedience to lawful command, but they may show that I have been previously convicted.

1201. They may show that after the conviction?—It says that it shall not be "revised more than once;" that may be right or wrong. You asked me the meaning of this term. As I understand it, assuming that the finding is sent back for revision, no fresh evidence can be received by the court in respect of the charge made against the prisoner, but the court can receive fresh evidence in respect of previous convictions; it is the existing law.

*The Judge Advocate General.*

1202. Have you any remark to make on Section 74?—Section 74 is simply a declaratory section. As I had gone through all the sentences, I thought it necessary, for the sake of symmetry, to put in this clause. I believe that sentences of death are practically carried into effect

*The Judge Advocate General*—continued.

effect abroad under a warrant appointing a provost marshal. How they are carried into effect in the United Kingdom I do not know; there is no modern example of a man being shot in the United Kingdom.

*Sir Alexander Gordon.*

1203. Section 74 contains the words "Provided by the custom of war;" I believe the Committee have recommended the omission of the words "according to the custom of war" in the earlier clauses of the Bill; does not that entail the necessity of omitting those words in all other cases?—No, we must recognise the custom of war in this case. As I understand it, there is no law whatever, except the custom of war, as to how a military prisoner is to be put to death. In some cases they hang him, and in other cases they shoot him. I asked one of the officers how it was done, and I think he told me that the court martial in its sentence stated whether the prisoner was to be shot or hung, according as they thought that the offence was or was not exceedingly disgraceful, and wished to inflict a still greater degradation upon the man. It is carried into effect, Simmons says, by a warrant, which appoints a provost marshal, I think, for the particular purpose. The reason why I put it into the statute was because, inasmuch as I have provided for carrying all the other sentences into effect, if I had not noticed this there might have been a presumption that it was not intended to be inflicted.

*The Judge Advocate General.*

1204. What do you say about Clause 75?—Clause 75 is a most elaborate consolidation.

*Mr. Merewether.*

1205. It is an attempt to render intelligible Section 18 of the Mutiny Act, is it not?—I have done my best to make intelligible the most difficult sections that I almost ever had to deal with. But what I propose to do before this Bill is brought in, is to refer this matter to all the authorities conversant with these sentences, and to have it settled by them. I do not pretend to have done more than to have endeavoured to consolidate, to say the least, most perplexing provisions.

*The Judge Advocate General.*

1206. What do you say with respect to the regulations as to imprisonment?—I have done exactly the same there, and I propose to adopt the same course. These clauses must be examined by Sir Edmund DuCane, and the officers who are familiar with the subject. I have done my best to consolidate a great number of provisions.

1207. Postponing Clause 76, will it be necessary to retain Clauses 77, 78, and 79?—Clauses 77, 78, and 79, or some parts of them, I imagine will not be required under the new prison laws. But these clauses are strictly departmental; they are questions of which I really cannot possibly know anything.

1208. Departmental in what sense?—For instance, it is enacted that the Governor shall supply every soldier in the prison with diet and other necessaries. That is only intended, I

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*The Judge Advocate General*—continued.

suppose, for local prisons; it is not required for Government prisons. In the United Kingdom there are, as we know, no longer any local prisons, and therefore I suppose these clauses will require modification to a considerable extent; but I have not had time to get the corrections. These particular clauses have nothing to do with general principles of law, but have only to do with prison regulations.

1209. What do you say as to Clause 78?—I believe that Clause 78 is not required. That again applies to prisons when they were under local government.

1210. Does the same remark apply to Clause 79?—Yes. Of course if the prison belongs to the Government, they will take care to imprison the people.

1211. Postponing Clauses 80, 81, and 82, what do you say as to Clause 83?—Clause 83, I think, is sheer nonsense, and ought to go out. To say that no Secretary of State or Paymaster General shall receive any fees in respect of the pay of any officer, I submit, is scarcely necessary at the present moment.

*Sir Alexander Gordon.*

1212. It does not apply to the Secretary of State only, but it applies to any officer or paymaster, does it not?—Certainly; both the civil and military law must be strong enough to prevent a man from stealing or embezzling money. However, all that I should ask the Committee to do is to strike out the Secretary of State and the Paymaster General of the Army. To prohibit the Secretary of State, or the Paymaster General of the Forces, who may be a Cabinet Minister, from deducting from the pay of any officer or soldier, is so contrary to the common form of statutes and to Parliamentary decorum, that I submit to the Committee that those words ought to be struck out.

1213. Are you aware that on one occasion the Government of India ordered deductions to be made from the pay of officers of the army?—It is quite possible.

1214. Do you not think that that is very improper?—That depends upon whether it is done by law or not; but this clause would not prevent that being done.

1215. Nothing can prevent them, if they choose to do it, because they are all-powerful; but, when you state distinctly that no Secretary of State shall make any deductions whatever from the pay of the officers of the army, the language is so clear that no mistake can be made about it?—It might, perhaps, be a very good thing sometimes to dismiss the Secretary of State from his employment, but it is not the usual thing.

*The Judge Advocate General.*

1216. No Secretary of State is to make any deductions except on an order issued by himself?—He has absolute power to make any arrangements he likes. I think the whole clause might go out. The whole of it is provided for elsewhere. In page 35 it says: "The Secretary of State may order or withhold the payment of the whole or any part of the pay or pension of any officer

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Sir  
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 K.C.B.  
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*The Judge Advocate General*—continued.  
 officer or soldier." Then the next section says that he is not to withhold it. I submit that it ought not to be in the Act of Parliament in that fashion. I should leave the whole of it out.

*Mr. Herschell.*

1217. I quite agree that the Secretary of State and the Paymaster General might be struck out with advantage; but why should you not retain the penalty on the Paymaster or other officer?—Because he would be much more severely punished.

1218. If you omit this clause without any provision, it will be contended that your intention was that he should be free from punishment alto-

*Mr. Herschell*—continued.

gether, will it not?—No, he would still be tried by court martial.

1219. Under which clause?—Under the Devil's Clause.

1220. You propose to omit a clause which specifically deals with an offence, and then you say that that offence is to be tried afterwards under the general clause, the Devil's Clause; I venture to think that that is not a very satisfactory mode of dealing with the matter?—If the Committee really wish to retain the clause the proper way would be to put it amongst the other offences, as a substantive offence, with a proper punishment, not exceeding imprisonment.

*Tuesday, 9th July 1878.*

MEMBERS PRESENT:

Mr. Campbell-Bannerman.  
Sir Alexander Gordon.  
Sir William Vernon Harcourt.  
Sir Henry Havelock.  
Mr. Hayter.  
Viscount Hinchbrook.  
Mr. John Holms.  
The Judge Advocate General.

Colonel Loyd Lindsay.  
Mr. Merewether.  
Colonel Mure.  
Major O'Beirne.  
Mr. Parnell.  
General Shute.  
Sir Henry Wilmot.

SIR WILLIAM GEORGE GRANVILLE VERNON HARCOURT, Q.C.,  
IN THE CHAIR.

Field Marshal His Royal Highness The DUKE of CAMBRIDGE, K.G., attending by permission  
of the House of Lords; further Examined.

Colonel Loyd Lindsay.

1221. THE Committee would be glad to have your Royal Highness's opinion with regard to certain points; and the first thing which they would wish to inquire of your Royal Highness is with regard to giving increased summary powers to commanding officers; would your Royal Highness be kind enough to say what is your opinion upon that point?—On the former occasion I said I thought it would be of great advantage if increased summary powers were given to commanding officers, and I am still of that opinion; because although I do not think you could do away with regimental courts martial altogether, for reasons which I could give, I am quite satisfied that you would do well to have fewer regimental courts martial than you have now; and if you gave more power to commanding officers there is no doubt that you would have very much fewer regimental courts martial.

1222. I believe that your Royal Highness has caused some inquiries to be made throughout the Army amongst officers commanding regiments?—Yes, a very large proportion of the officers commanding regiments, say that it would be a great advantage that they should have increased powers; and in that I entirely concur. I think that as many as 166 officers were asked, and I believe that two-thirds of them were in favour of increased powers being given.

1223. I suppose that your Royal Highness would say, that it is a matter of degree as to the precise quantity of punishment that should be inflicted?—Of course it ought to be defined by statute. I think that 21 days' imprisonment is as much as ought to be given by a commanding officer, it being now seven days.

1224. You would extend the present powers which commanding officers have of giving imprisonment from seven days to 21 days?—Yes.

1225. What is the present power of a regimental court martial to allot imprisonment?—They can give 42 days.

1226. Would your Royal Highness think that

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Colonel Loyd Lindsay—continued.

the power given to a commanding officer should be as large as that?—It should, I think, not be so large as that. I am of opinion that you ought not to give summary power to a commanding officer to break a non-commissioned officer, but that that should be done by a regimental court martial; because otherwise you might have very arbitrary acts. I do not say that it would be so, but it is quite possible that a commanding officer might take a dislike to a non-commissioned officer for some small matter, and if he had the power to break him off hand, the result might be serious. If a non-commissioned officer, and particularly a serjeant, is broken, I think he ought to be broken by a regimental court martial and not by the authority of the commanding officer.

1227. What appeal would you give to a soldier supposing that he was not willing to accept the punishment awarded him by his commanding officer?—The same right as he has now to request a court martial.

1228. Then, in point of fact, it would be an appeal against the commanding officer's punishment to a court martial?—Yes, to a court martial.

1229. On another matter of detail would you recommend, Sir, that a commanding officer should take evidence upon oath?—I do not recommend that. Regimental courts martial take evidence upon oath, and the commanding officer does not. I think you ought to have some minor tribunal which takes evidence upon oath, and that would be the regimental court martial, which, therefore, in my opinion, should be retained.

1230. Then you would give full powers to a commanding officer to sentence a man to 21 days' imprisonment without necessarily going through the formality of examining witnesses upon oath?—I think so. By Art. of War 50, a soldier has a right to a court martial, if he so request it, instead of taking a summary award. If it is necessary to examine the witnesses upon oath there is the regimental court martial to resort to.

1231. Would your Royal Highness increase the power of commanding officers with regard to

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the stoppage of pay?—I would not. I think that the less you interfere with a man's pay the better; for drunkenness it is a good thing, but beyond that I would not interfere with a man's pay unless a man is absent from duty. That fact alone justifies your stopping his pay for the duty he has missed, because he has not done the duty to the State which he has undertaken, and to that extent, of course, you would stop his pay for the day, or whatever it was that he was absent without leave; but beyond that I would not go.

1232. In point of fact, Sir, whenever a man is absent he forfeits his pay as a matter of course?—He forfeits his pay as a matter of course, and that, I think, ought to be maintained strictly; but I would not inflict any forfeiture of pay otherwise than as now ordered by regulation for drunkenness.

1233. Do you think, Sir, that the discipline of the service might be kept up as efficiently as it is now, by giving smaller sentences than those which are now given?—I think the discipline of the service is better kept up by small sentences and sharp ones than by long ones not carried out very strictly. The less time the man is in prison the better; because the shorter the sentence the better for the man and the better for the service, inasmuch as the soldier comes back more quickly to the ranks. I may say incidentally that I also think that the less a military prisoner is mixed up with a civil prisoner, unless he is a convict, the better; and that mixing together is a necessary consequence of a long imprisonment, because, as a matter of course, in those cases soldiers must very often go to a civil gaol.

1234. Do you think, Sir, that any offences which are purely military offences, such as men sleeping on their post, and offences of that kind, could be tried in some different way from offences which might be called criminal offences; could any different sort of punishment be allotted to those which I would describe as simply military offences?—I do not see what other punishment you can give than you give now. You imprison a man, and you can give no other punishment. I think that giving a man drill, for instance, as a punishment is a very bad thing, if you can avoid it. You only disgust him with his profession, and I think the less drill he gets as a punishment the better. If a man misconducts himself at drill you give him drills because he is careless; that is quite legitimate; but it is much better not to give a man a punishment which may disgust him with his profession; and I do not see what other punishment beyond imprisonment you can give him.

1235. But still there would be a difference in your mind, Sir, would there not, between a man who had merely committed a military offence and one who had committed a disgraceful offence?—Undoubtedly; you would give him a longer punishment for a disgraceful offence than you would for a military offence, if the military offence is not a very serious one.

1236. I was anxious to know your Royal Highness's opinion about the proposal which I have heard of drafting men into battalions, and punishing them for desertion in that way rather than by sending them to gaol?—A man whose evident intention is to desert as often as he can had much better be in some regiment from which he cannot desert; and I think that you might draft for

Colonel Loyd Lindsay—continued.

general service men who are habitual deserters; not apportioning them to any special penal corps, which I think would be very objectionable, but to any corps which may require men, and which is stationed where desertion is not easy, as, for instance, in India or in the Colonies. That would be a very good thing, and perfectly legitimate; because if a man manifests an intention to desert, I do not think you need show the same consideration for his feelings as if he was a good soldier. In fact if he constantly deserts, you have a right to make use of him for the benefit of the State as you think fit; of course, always provided that it is according to law.

1237. You allude specially to desertion; would you include also such offences as I have described, offences which are not of a disgraceful character?—I think it is better to confine it as much as possible to desertion, upon which crime it bears more than upon any other. Under Clause 54 of the Mutiny Act, and Art. of War 42, we have power to send convicted deserters to other corps.

1238. Then would these battalions be composed entirely of men who had misbehaved themselves?—By no means; I object in the strongest manner to any penal battalion. I say that men ought to be sent to the dépôt for general service; if we wanted men for the 10th regiment, or the 12th regiment, serving in India, and one in the West Indies, those men would be drafted off to those regiments, according to the exigencies of the service. In that way the service would be benefited, and the men would be in a condition to restore their characters, if they were fit for anything; and if they were not they would get punished by going where they were not able to desert and rob the State. Desertion is a positive robbery of the State, because every time that men desert and re-enlist they get a new kit, and so on. They do not mind the imprisonment if they get the money for a flog for a week or a fortnight, or a month. That I think would be checked by that means.

1239. Then the object would be that they should be placed in stations where they could not desert?—In stations where there is less facility for desertion than the home stations.

1240. That would be the effect rather than inflicting any punishment upon them?—The punishment is that they are deprived of the possibility of desertion which they are not deprived of if they are serving in regiments at home, where they desert from one regiment to another as fast as they can get away.

1241. With regard, Sir, to the different courts martial, the regimental court martial, the district court martial, and the general court martial, I presume that a man is sent to a higher court in proportion as the military authority thinks he deserves a heavy sentence?—There are certain crimes which are considered very serious crimes which are laid down by regulation, all of which must be tried by general court martial, unless the commander-in-chief, or whoever is the authority at the station, says that he will allow it to go to an inferior tribunal, which would, of course, be the district court martial. But you will find that although the sentences of a general court martial are heavier merely because the offences are graver, district court martial being constituted for the trial of lesser offences than those which are tried by general courts martial, have, of

course,

Colonel *Loyd Lindsay*—continued.

course, less powers of sentencing given to them.

1242. A district court martial would consider that it was its duty to award a heavier sentence than a regimental court martial?—I do not think that any court martial would consider it necessary to award any specific sentence. A district court martial has more power to award punishment than a regimental court martial, and a general court martial has more power than a district court martial; but although they have greater powers they are not obliged or called upon to exercise them. That depends upon the case as it presents itself before them.

1243. I believe, Sir, that in certain cases a general court martial will award a very heavy punishment, and will accompany it with a recommendation to mercy, whereas that same court might itself have given a lighter punishment?—That does happen, and may happen for some reason which one cannot define; but that is entirely within the competency of the court. No court is forced or called upon to give the heavier punishment; on the contrary, it is left entirely within their own competence to award such punishment as, under the circumstances, they may think fit; but they have the power to award the extreme punishment at one end, and to award the lesser punishment at the other; and within those two points they can award any amount of punishment that they think suited to the offence committed and to the culprit before them. No doubt a bad man, or a man who had been constantly punished, would, in the opinion of the court, generally be considered deserving of a heavier punishment than a man who had perhaps committed a very grave offence for the first time.

1244. What I mean is, that the court considers itself to a certain extent justified in giving a heavy sentence, it being left to the discretion of the confirming authority, if he thinks proper, to lessen that sentence?—The court has to judge of the case as it stands before it; but, at the same time, there is no doubt that the authorities take care not to send to a general court martial offences which are not serious, and therefore, as a matter of course, the result generally is, that offenders sent there get a heavier punishment; but that is merely because the crime which is brought before the court is a very serious one, and therefore requires a heavy punishment. But it is perfectly within the competence of the court to give as much or as little punishment as they think fit, within the limits of the highest and the lowest punishment which they are allowed to award.

1245. Would any censure fall upon a general court martial if it did not inflict such a punishment, for instance, as penal servitude for a certain crime?—Certainly, if in the opinion of the confirming officer the court had taken the evidence in a very irregular manner, or had taken very slight notice of previous convictions, and so on, it would be quite in the competence of the confirming authority to point out to the court that they did not appear to understand their duties when they had a prisoner of that description brought before them; but the court could do exactly as they thought fit, and they need not even pay any attention to any remarks made, because the court is responsible, and not the confirming authority.

1246. The court need not pay any attention  
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Colonel *Loyd Lindsay*—continued.

to such remarks, because the confirming authority may lighten the sentence or may set it aside altogether, if he thinks proper?—Certainly.

1247. So that the confirming authority has the power of sentence entirely in its own hands?—The confirming authority has the power of confirming or diminishing a punishment awarded by a court martial, but it can never increase it. It can order a court to re-assemble, but I think it will be found that since the Royal Commission on Courts Martial sat, we do not often re-assemble courts martial. Previously, during the time that I have been in office, there have been a great many courts martial ordered to re-assemble, and it has constantly happened that the court have adhered to their original opinion; and there is an end of it. So that it is entirely within the competence of the court; they may be advised or directed to a certain extent, but it is entirely within their own competence to take that advice or follow that direction as they may think fit.

1248. I believe that there are a certain number of sentences, 16, I understand, which are cumulative in their character; can you inform the Committee, Sir, whether those sentences have or have not been carried out?—They have not been carried out, because when representations are made to me all in excess of two years has been diminished. But it has to be recorded that the men have had more punishment awarded to them than two years' imprisonment.

*Chairman.*

1249. With regard to the first point of extending the powers of commanding officers, the Committee would be glad if your Royal Highness would explain to them a little more fully what is the present evil which you desire to redress by that alteration?—I think there are far too many courts martial, and if we could reduce the number of courts martial it would be a great advantage. Almost everything has now to be brought before a court martial, and, therefore, these regimental courts martial are perpetually sitting, and they become a great deal too common, which is a very bad thing. Somebody must have the power of punishing, and there is no other person than the commanding officer to whom that power can be given. Therefore, if you can give more power to the commanding officer than he has now, I think it will be an advantage, and you will reduce, *pro tanto*, the number of courts martial.

1250. What, Sir, is the sort of offence for which you would give the commanding officer power to inflict imprisonment for 21 days?—The offences which now come before a regimental court martial are defined in the Articles of War. Of course, if the principle were adopted, you could take as many of those crimes as you chose out of the jurisdiction of courts martial and say, "These might be dealt with by the commanding officer," so as to confine them within reasonable limits.

1251. What is the process through which a commanding officer now goes before he inflicts seven days' imprisonment?—The man is brought to the orderly-room in the presence of the captain or officer commanding his company; the officers, the non-commissioned officers and men, who know anything about the offence, are brought up, and the whole thing is investigated in the presence of these several persons by the commanding  
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manding officer, with generally four or five people in the room. If the man has nothing to say for himself the commanding officer awards the punishment accordingly, and it is put down upon the sheet every morning; and the general officer at his inspection has the power, and indeed the orders, to look over those punishments to see that they are in accordance with the regulations.

1252. The honourable and gallant Member used a phrase which does not altogether commend itself to the mind of a lawyer, viz., that the commanding officer should dispense with the formality of an oath; would you recommend that in inflicting so serious a penalty as 21 days' imprisonment, the attestation upon oath of the veracity of the evidence should be regarded as a mere formality?—My own conviction is that the statements made are generally perfectly borne out by the facts. There are always three or four witnesses, and one corroborates the other, and if they were not corroborated the commanding officer would not award the punishment; and a soldier may always request a court martial in lieu of taking any summary imprisonment. Therefore, I do not see that you would gain much by having the evidence given on oath; it is a question between the commanding officer and those witnesses who stand before him. In the case of a non-commissioned officer being broken, I think that the formality of a court and the examination of witnesses upon oath ought to be gone through; but I do not see any absolute necessity if more powers are given to the commanding officer that he should examine witnesses upon oath.

1253. Surely the liberty of an individual soldier is as precious to him as the rank of a non-commissioned officer, and he should have the same protection, should he not, before he is subjected to 21 days' imprisonment as a non-commissioned officer should have with regard to his rank?—Occasionally a non-commissioned officer is a very smart-looking man, and a very good sort of man, but not a very bright one; and in that case a commanding officer might be induced to break him because he thinks he can get a better man to take his place. I am inclined to think that he should not have the power of doing that, but that that should be done by a court composed of four or five officers who should award that punishment, which for a non-commissioned officer is a very grave thing, because the whole of his status is very much altered. A serjeant, for instance, is decidedly superior to men in the ranks. The moment that he is reduced to the ranks he reverts to the position of a private soldier, and he, to a very considerable extent, loses his social status by that point, which is much more serious to him, I think, than it is to a soldier to be punished for some offence which he may commit against discipline or against propriety. Therefore, I myself, think that the cases are not quite the same.

1254. But, Sir, in civil life where summary jurisdiction is given, the prisoner always has the security of the oath of the witnesses; what objection is there to treating the commanding officer in a matter of this kind as if he were a magistrate; for instance, dealing summarily with offences; why should not an oath be administered before the commanding officer in the orderly

*Chairman—continued.*

room just as before a justice of the peace or before a court martial; why is it that the fact of its being a court martial requires an oath, when in the case of the jurisdiction being given to a single man, an oath is not required?—There is no reason why there should not be an oath if it is thought necessary, but I should not have thought that the questions which would come before a commanding officer were not of such a character as to require an oath to be taken. The cases which come before a commanding officer would be generally matters of irregularity in the ranks, or having been out late at night, and not coming in, and various comparatively trivial matters of that sort, but which militarily are serious; and which, unless they are dealt with, might extend very much in corps and make them very ill-disciplined. Therefore I do not think that the offences which would be dealt with by the commanding officer are of a character to require an oath, although of course there is no objection to the oath if it is deemed necessary. But an oath is a very serious thing, and when you bring a man up and evidence is given against him on oath, I think you naturally look to some more important offence than probably the soldier who is brought up in that way has committed.

1255. Your Royal Highness has spoken of an appeal to a court martial; I suppose that an appeal of that kind is an extremely serious matter, and not one that is very likely to succeed, is it?—It is in so far a serious matter, because it is questioning the fairness or justice, or propriety of a constituted authority which has done something under what it assumes to be the regulation. You must have an appeal, and the only way to have it is to try the soldier before some tribunal. Therefore to that extent anybody going before a court martial, goes with a sort of indication upon him that he has committed himself somewhat gravely; but the court martial may not find that to be the case, and then of course he would be dealt with just as leniently as any other offender.

1256. What I meant to indicate, Sir, was that probably it would require some very overwhelming case indeed to induce a court martial to reverse the decision of a commanding officer; so that practically an appeal would only in very rare cases be successful?—Certainly; but there is another mode. At the inspection the general officer is instructed to ask whether any man has a complaint to make. There are not many complaints, but it very often happens that two or three men in a regiment fall out and they make a complaint about some punishment which has been awarded to them. Then the general officer goes into those cases, and decides them without any appeal to a court martial.

1257. At present, Sir, I observe that by the 50th Article of War, "Any soldier ordered by his commanding officer to suffer imprisonment or deprivation of pay (except in certain cases of fines for drunkenness, in which the offence is not denied), shall, if he so request, have a right to be tried by court martial for his offence instead of submitting to such imprisonment or deprivation;" so that at present the appeal is to any court martial?—That is the case so far as the deprivation of pay goes; but an appeal regarding pay and clothing would go to a general court martial.

1258. Imprisonment



*Chairman*—continued.

1258. Imprisonment may carry with it loss of pay, but where a man is sentenced to loss of pay or to imprisonment, he may now have an appeal to a court martial?—I think that ought to remain.

1259. In civil life a man would be ordinarily sent to the assizes or to the quarter sessions, but he may in some cases, if he likes, say, "I will be dealt with summarily by the magistrate," in which case, generally speaking, a lighter sentence is given. I do not know whether you think, Sir, that in military matters it would be possible or advisable to give to the prisoner the option, as is given in civil cases, either of having the matter summarily disposed of by the commanding officer or of going to a regimental court martial; or whether you think that would be inconsistent with discipline?—I think that if you retain this power of appeal from the punishment awarded by a commanding officer to any court martial that would meet the case fully.

1260. Do you think, Sir, that the man would get practical redress in that way from a court martial?—A court martial would always view with some suspicion a man who appealed from a punishment awarded to him by his commanding officer.

1261. Therefore if a man was more likely to get a fair sentence from a court martial than he would be from his commanding officer, he would lose a great deal by going to a court martial only in the way of appeal rather than by going to a court martial in the first instance?—Yes; but in one regiment men might be always appealing to courts martial, and in another regiment they might not, according as they fancied that the commanding officer was strict or not. It would be a very awkward thing if you left it to their option. You might give them the power of appeal, but I do not think I should like to give them the option of going to a court martial or not.

1262. With regard to the punishment of desertion as your Royal Highness has suggested, by drafting the men for general service, would it be a sufficient punishment in cases of desertion, simply to send a man to another regiment from which he could not desert?—No; I would award him the ordinary punishment for desertion, and I would add to it in the case of any determined deserter that he was sentenced to be considered as a man for general service, and to be sent to any regiment that the authorities might think advisable.

1263. That would be a consequence of the punishment?—I would make that in addition to the punishment that would be awarded for the offence.

1264. Do you not think there would be some danger, Sir, of the commanding officer of the regiment which was used for that purpose, objecting to having men sent to him who had been deserters?—Not, I think, if you made it general. I would not put them all in one regiment or in another, but I would scatter them into every regiment of the service. If it was once accepted as a regulation, I do not think that any officers would object to it, and if they did, I do not think they would have any right to object to it. I think that if you selected certain regiments it would be very objectionable, but not if you made it a general rule.

1265. Confining it to desertion entirely?—

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*Mr. Campbell-Bannerman.*

Entirely to desertion. I never would inundate a regiment with men of that sort; I would have only a very few such men in one regiment.

*Sir Henry Havelock.*

1266. The object would be, simply to put the man into a position where he would have less facilities of deserting?—Just so.

*Chairman.*

1267. With reference to the sentences of courts martial, I gather from your Royal Highness's evidence, that you regard the court martial as being the body really responsible ultimately for the sentence?—Most assuredly; entirely so.

1268. You would not agree in the view that a court martial was merely a body to inform the confirming officer, and that the confirming officer was the person who passed the sentence?—Certainly not.

1269. In point of fact, the ultimate responsibility for the sentence rests with the court?—It rests entirely with the court.

1270. And no pressure on the part of the confirming officer, or any other body, could compel a court martial, for instance, to pass sentence of death, if they did not choose to do so?—Certainly not. There is no doubt that, occasionally, courts martial do very extraordinary things, and one cannot understand how they have read the evidence; but it is entirely in their competence, and if anything is pointed out to them and they do not choose to accept it, the responsibility rests upon them, and upon nobody else.

1271. The confirming officer, and, of course, ultimately the Crown itself, has the power of mitigating the punishment?—Certainly.

1272. Upon the subject of cumulative punishment, does it seem to you, Sir, that as a fact, the sentences of courts martial are frequently too severe in the first instance, so that there is little reserve of punishment, if I may use the phrase, left for repeated offences?—I think that is the case.

1273. You think that it would be a better practice, if it could be secured, that the initial sentence should be a lower sentence, so that if there were repeated offences those offences should be punished by increasing the former sentence?—Yes; but at the same time, when a man is brought up for trial, the case as it stands is the one that the court adjudicates upon; if they think it a very bad case they think it necessary to give a very high sentence. It would be extremely difficult to tell them that they are not to give a very high sentence, because the man may commit himself again, and they may want to give him more. I do not think that long sentences are a good thing; but, as I have already said, general courts martial in particular are very much guided by what a man's previous conduct has been; and if it is found that he has been perpetually committing himself, no doubt then the courts martial think it necessary to mark their sense of his misconduct by giving him as much punishment as the law allows.

1274. Of course the statute defines the sentence; but do you think it would be desirable or possible to issue instructions from the military departments, for the guidance of courts martial, which should lead to the passing of lower sentences,

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in the first instance, where the offence is not of the gravest character?—It is very difficult, and I will tell you why. The punishment is entirely in the competence of the tribunal that is sitting. These tribunals do not like to be interfered with; they object extremely to be interfered with by any authority that suggests to them what they should do. They say, "Here is the law; we are entitled to read the law as we think fit, as each case arises, and we consider it our duty to act in accordance with our consciences and with the law so before us." Therefore anything that we lay down they may accept or they may not; but it is impossible to make them accept it, and, what is more, the attempt generally has the effect of rather inducing them to take an independent course, in order to show the independence which they possess, and that they are the only people to deal with the case, and not the authorities, who either mitigate the sentence or disallow it altogether.

1275. Does not your Royal Highness think that if there were some general regulations issued by the military authorities, pointing out to the courts that it was not desirable, in the case of first offences, to inflict the full penalty, but that it would be better in such cases to inflict mitigated penalties, that would be attended to, and that it would be more consonant with discipline than allowing the court to pass a very severe sentence, and then afterwards reducing it?—The power of reduction is entirely in the hands of the confirming officer; therefore you have always the power, and if you choose to exercise it you do so. For instance, we exercise it to a very large extent. There is no doubt that you might, and you very often do, suggest that they should not give so severe a punishment; but still you restrict the power of a court martial by any internal regulation of that sort; and they consider that they are entitled, and so they are, according to law, to give a punishment commensurate with the offence, in accordance with the regulations or the legal instrument laid down for their guidance; and they do not like (and I can quite understand it) to have their judgment warped or interfered with by a superior authority.

1276. The fact which your Royal Highness has mentioned, that the military authorities are in the habit of reducing sentences, does indicate that sentences are, to a very great extent, considered excessive, or they would not be frequently reduced?—Of course, to a certain extent, that is so; but, at the same time, the fact that the sentence is awarded shows that the offence committed is a grave one, and that the soldier who has committed it has made himself liable to the severest penalty of the military law. Then if the confirming authority, as it is always very much disposed to do, takes the mitigating circumstances into account, I do not know that it is a very bad thing; and a soldier sees by the remission that his case has been directly considered by the higher authority, and that he has an additional security against arbitrary or unjust treatment.

1277. Do you not think, Sir, that the fact that courts martial pass severe sentences which the higher authorities are in the habit of relaxing, might tend to give both the soldiers and people outside an impression that a court martial was a harsh tribunal?—A good deal depends upon the

*Chairman—continued.*

man's conduct in gaol. Supposing that a man behaves very well in gaol, the authorities are glad of having an opportunity of letting him out. They say to him, "You are a reformed character, and although a year of your sentence remains unexpired, still as you have behaved well all this time we will give you another chance, and we remit half or two-thirds of it, as the case may be." I think that that is a great advantage. I am quite sure that many a man behaves well in gaol on that account who would very likely not behave well if he were to have only a short punishment awarded to him, and knew that whether he behaved well or not, he would be the same length of time in gaol. I think it would be a good thing to have the power, and to exercise it freely, of allowing a man's conduct in gaol to mitigate the amount of punishment awarded.

1278. Of course, naturally the tendency of the higher authority would be not unnecessarily or even without very grave cause to disturb the sentence of the court martial?—We do not disturb it beyond mitigating it for good reason, either because we consider that the punishment is rather excessive, which, as you have yourself remarked, is sometimes the case, or because very often the commanding officer says, "This man has behaved very ill, but he has been a good soldier originally; it was quite right that he should have this severe punishment because his crime was a grave one, but he is such a good soldier that I think you ought to be merciful if you can be merciful." And I do believe that these acts of grace and mercy which constantly take place in the remission of heavy punishments, have a beneficial effect.

1279. I gather that your Royal Highness is of opinion that nothing effectual or beneficial could be done by regulation, or by any other document which should point out to courts martial the principles upon which they should act in the allotment of sentences?—I think it is better left alone. With the great freedom of action which has always been exercised, and which I am quite satisfied always would be exercised, by the superior authority.

1280. Supposing, Sir, that a sentence of penal servitude, or a sentence of two years' imprisonment, as the case may be, is passed upon a man, may I ask how it would come under the cognizance of the authorities that that sentence was excessive?—Because every court martial that is confirmed is read by the general officer who confirms it, or by the commander-in-chief, if it is a general court martial, and when the punishments come up, supposing that I see that there is too severe a punishment, I make a note, and I say, "Let this man's conduct be reported to me again after, say, two years," or whatever I may think sufficient; and then if his conduct is good during that period I may say that I will recommend Her Majesty to let this man off. Or it comes to us direct from the prisoner, who appeals to the authorities, and who says he is very sorry for what he has done; he has been a good soldier before, might he be let off. I very often refer it to the commanding officer, and constantly the commanding officer says that he will be only too delighted that I should remit a considerable portion of that sentence. It is remitted, and then that man is grateful to his commanding officer, and he is grateful to the authorities, and he has a much

*Chairman—continued.*

much better chance of getting on well than if he came out of gaol after a short sentence without having received any such indulgence. I am quite satisfied that it has a very beneficial effect.

1281. The evidence of your Royal Highness goes rather to this, that it is a good thing in the administration of military law that as a general rule the maximum sentence should be given with a view of reducing it through the commanding officer, or military authority?—I do not say the maximum; I say a sentence according to the amount of crime that has been committed. If the crime is a first offence, I should think it very unusual for any court to give the maximum punishment; but they might give a year or two, and I might, perhaps, think that a year is too much, and I should be very glad, upon good reasons assigned, to let that man off after six months or nine months; if I let him off something, that very fact is an inducement to him to mend his ways if there is any good in him. I do not think that it is at all desirable to go to the full extent, if you can avoid it; but I do not think I should curtail the power except through the reason and good sense and justice of the court itself, because I think the court ought really to judge cases upon its own responsibility, and with its own good judgment, and it can judge better than anybody outside can, because they hear what is said, they see what sort of a man they have to deal with, and they know by his previous conduct whether he is worthy of consideration or not. It is a compliment, and a deserved compliment, which you pay to the court, and if they do not know how to exercise it you can revise their decision.

1282. There is one authority before whom courts martial come as a matter of course only upon legal points at present; do you see any objection, Sir, to the Judge Advocate General's department calling the attention of the military authorities to the character of the sentences as well as to the legality of the transactions of the court?—I see no objection whatever to the Judge Advocate General's calling the Commander-in-Chief's attention to any point that may arise in any court martial, whether it is legal or otherwise; and of course the Commander-in-Chief would, in his competence, consider whether he ought to attach importance to it or not. But I do not know that that is not done now; there is no reason why it should not be done, and I believe it is done.

1283. I understood from Mr. O'Dowd, that in the Judge Advocate General's office they have officially nothing to do with any matters, except matters of law, and that if any case occurred where it appeared that the sentence was very exorbitant, though by a private note attention might be called to it, it was not considered part of the business of the office, or that they had any official right to do such a thing; but I am suggesting to your Royal Highness whether it might not be well to make it clear that the Judge Advocate General's office might equally call attention as a matter of their ordinary business to excessive sentences as to irregularities of law?—There is not the slightest reason why they should not do so if they think fit; but I think it is better that the confirming officer should have great latitude upon his own responsibility, and upon the competence of his superior position; and, therefore, the more it emanates from himself

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the better it is. I think that it would be much better coming from the Commander-in-Chief than from the Judge Advocate General, because the Commander-in-Chief is in a position to say, "I consider that it ought to be or ought not to be. I do not see that in these cases as a rule the Commander-in-Chief, or whoever assists him, is not quite as well able to judge of these things as the Judge Advocate General. The point of law is for the Judge Advocate General; the point of discipline, I think, is more for the military authorities. The Judge Advocate General, I apprehend, would find it rather inconvenient if he were to carry on as an executive officer the discipline of the army. He carries on the law of the army, and he points out where there is anything illegal; but the Commander-in-Chief carries on the discipline of the army; he knows the commanding officers, and he knows the regiments; I know what the commanding officers of regiments are, and I know what to think of them, and I might consider that one man is very reliable, when perhaps another might not be. Those are incidents of the service which the military authorities alone can judge of; whereas the Judge Advocate General can only, in my opinion, judge of the legal points of the case; but if he thinks there is anything very serious in any punishment awarded, I see no reason to object to his drawing the attention of the Commander-in-Chief to it, and saying, "This is so very severe a punishment that I consider it right to draw the attention of the military authorities to it," though probably their own attention would already have been drawn to it; I am not aware that that is not done, and I know of no reason why it should not be done. A district court martial goes to the Judge Advocate General's department to look over to see that it is all correct; but I think that anything arising out of it should pass through the Commander-in-Chief, and that the information so given should not go direct from the Judge Advocate General to the general officer, but to the Commander-in-Chief. We have had actual instances of legal decisions on proceedings which have not been considered correct in law given to district courts martial, of which we knew nothing at all at the office, and we might be perfectly in the dark and be doing wrong without being in the least aware of it. I think that every one of these cases most decidedly should be passed on to the general officer who confirms the court martial; but it should always come from the Commander-in-Chief or from the adjutant general, in his name, of course, so that we may always know the point upon which the Judge Advocate General dissents from any action which has been taken by a court; and I think it is a great pity that such should not be the case.

*Sir Henry Havelock.*

1284. Has not that, Sir, which is the existing practice in India, been found very beneficial?—Certainly, and I could never understand upon what ground it is not so here. There should be direct intercourse between the departments and these general officers, but the district courts martial do not come to the highest military authorities, but go direct to the Judge Advocate General for inspection, and then he deals with them, and if he sees anything irregular he points it out.

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1285. There would be no limitation to the discretion of the Judge Advocate General in sending them direct to the Commander-in-Chief, would there?—I cannot see any difficulty in it. All courts martial are submitted by the Judge Advocate General to Her Majesty, and after the Judge Advocate General has advised that the proceedings are legal, then the court martial comes to me to be dealt with officially, in accordance with such advice as I may give Her Majesty, I having the legal opinion of the Judge Advocate General that the proceedings of the court have been correct.

General Shute.

1286. May I ask your Royal Highness, with reference to a question put to you by the Chairman, whether it is not the case, that as a reason for the oath being quite unnecessary in an ordinary inquiry by a commanding officer in the orderly room, there is far less difficulty as to evidence in a small, and, if I may so call it, intimate society, like a regiment, when a case is brought before a commanding officer, than is the case before a bench of magistrates at quarter sessions?—I stated that I thought that as so many of these offences are very trivial in themselves, an oath was hardly necessary to confirm the evidence.

1287. Your Royal Highness is aware that a commanding officer may give 28 days' confinement to barracks, with the usual drills, and so on, but if he gives even one day's imprisonment, a man has a right to appeal to a court martial, because it affects his pay?—Certainly.

1288. Such being the case, if you gave increased power to a commanding officer, that is to say, if you enabled him to give 28 days' imprisonment with hard labour, would not a soldier, in almost all those cases, if he was at all of a cantankerous character, appeal to a regimental court martial, on the chance of getting off through some legal quibble, rather than accept the decision of the commanding officer?—I think he would be very apt to do so.

1289. Would you give increased powers to regimental courts martial if you increased the powers of commanding officers with regard to punishment?—I would not increase the powers of regimental courts martial, because a case might go to a district court martial if it was thought a very serious one, and a district court martial has larger powers.

1290. Does not your Royal Highness consider that it might be desirable to empower a commanding officer to examine witnesses upon oath in a case in which the evidence was very contradictory, and in which there would be every chance of an appeal being made from his decision, with the option of associating one or two officers with him, as in the case of magistrates at petty sessions, from whose decision there need be no appeal?—As I have already stated, I would not do away with regimental courts martial; but, as the Chairman very justly said, where it was obviously essential to have evidence upon oath I would immediately send the case before a regimental court martial, if that was a sufficiently high tribunal, or to a district court martial if it was not.

1291. In fact, though you would increase the power of commanding officers so largely, you would still allow the soldier, in the case of even very small imprisonments of two or three days, to have an appeal?—I think he ought to have a power of

General Shute—continued.

appeal; but that must depend upon the gravity of the offence. If it were a very grave offence I think it should go to a district court martial, but in any case of real doubt and uncertainty the commanding officer should not deal with the case himself but should let it go to a regimental court martial.

1292. With regard to the non-commissioned officers your Royal Highness is, of course, quite aware that we should never have good non-commissioned officers in regiments if they felt that their position was at all unstable?—Certainly, and that is why I am so anxious not to let them come within the personal jurisdiction of the commanding officer. I think they ought never to be broken by a commanding officer's own personal decision, but only by some tribunal.

1293. With regard to the somewhat severe punishments that are said to be given by courts martial, for offences which in the eyes of civilians may seem to be trivial, is it not more desirable that courts martial should show their willingness to support their superior thoroughly, and at the same time is it not pleasant, and perhaps desirable, that a general officer should rather have the opportunity of reducing punishments than otherwise?—That is very strongly my opinion, as I think I have already stated.

1294. With regard, Sir, to the Judge Advocate General's offering an opinion, am I not right in thinking that the Judge Advocate General being a civilian, though he may be a judge of law, might be a very inferior judge of discipline; and does not your Royal Highness think that in such places as Manchester and Sheffield he would hardly understand that the commanding officer and the military authorities are obliged to be much more strict and severe in punishing men for one or two days' absence without leave, for instance, than in a place like Brighton, where there is no temptation to a similar offence; and that of this the Judge Advocate General would not be a very efficient judge?—Those matters of discipline can only be known to the authorities who have to deal with them. The Judge Advocate General is a legal officer who has to examine minutely every technical point in a court martial, and gives his opinion whether it is legal or not; but I think that the incidents of service and discipline can only be understood and dealt with by the military authorities.

1295. About six or seven years ago, when desertion was excessive, I observed on three or four occasions, at the Victoria Station, that the crowd of people assembled there constantly sympathised very much with the deserters in charge of military escorts; I consulted with the chairman of the bench of county magistrates upon which I sit, and with the clerk to the magistrates, upon the feasibility of a partial remedy which had suggested itself to me, and to which they saw no objection, viz., that in cases where a man gives himself up to the police as a deserter, and in many other instances of a similar nature, the clerk to the magistrates might write to the officer commanding the regiment or dépôt, and ascertain whether he would wish the case to be tried by the bench, the necessary evidence, documentary and otherwise, being sent, or whether he would prefer the prisoners being forwarded under escort. I should explain, Sir, that my object in this was, that I was satisfied that so many

General Shute—continued.

many men being marched about the country under military escorts tended to make the army very unpopular, and to give the people a false impression as to the severity of military discipline; perhaps, your Royal Highness would be kind enough to give us your opinion upon that point?—I think nothing is more objectionable than these military escorts, and that they ought to be very much reduced; but it is impossible to do so, for this reason, that we have not got proper places in which to lock up those prisoners. One of the things that causes more crimes than anything else is the fact that the general court martial prisoner, at all events, is kept so long a time in the guard room; and I believe that half the crime in the army is produced by it. If an ordinary person commits himself he is either bailed out or he is locked up in a prison until his case is brought forward. I say that a soldier ought to be put apart, not in the guard-room, but in a place for safe custody until he is tried, and then removed at once from that place to whatever place is assigned to him, whether a convict prison or anywhere else. I believe that crime in the army would be diminished by half if that were done. I think that the moving about of prisoners under escort, and not having proper places to lock them up in, when they are awaiting trial, are most serious things.

1296. I suggested at the same time that the bench should have power in very serious cases to commit for trial by a military court or to the assizes a prisoner who might be brought before them; what, Sir, would you think of that?—Of course if you do that you must alter the law; but so far as we are concerned, I should see no reason to object to it, if it was thought advisable. As the law stands now, men must be sent to the regiment, from which they have deserted, and tried there, and dealt with as soldiers who have either given themselves up, or been taken up.

1297. You are aware, Sir, that at present the popular feeling in England is that desertion and fraudulent enlistment are entirely military crimes, whereas they are frauds upon the public as well, are they not?—I think they are very serious frauds upon the public.

Mr. Hayter.

1298. The honourable and gallant Member for East Derbyshire, who is not able to be here to-day, has requested me to ask you three questions, Sir, with regard to naval courts martial. Would it, in your Royal Highness's opinion, be desirable to assimilate the law as regards court martial in the army to that in use in the navy, where there is but one description of court?—I think not. The naval service is so very different from our service; the incidents of service in the navy are so very much more restricted than the incidents of service in the army, that I cannot help thinking that it is better to leave it as it is. I know that in the navy matters are so restricted that the naval authorities can deal with cases with great facility; but I do not think you could assimilate the system of courts martial in the army to that in the navy.

1299. In fact, it would reduce rather than increase the elasticity of the tribunal?—I think so.

1300. The second question which I am requested to ask your Royal Highness is whether, in your opinion, it is probable that the frequency of courts martial under the system now in use in

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Mr. Hayter—continued.

the army may take away from the feeling with which they are regarded by the men?—As I have already stated, I think we have far too many courts martial, and if we could by any means reduce the number, it would be a great advantage. That is one of the reasons why I am of opinion that if you could give more power to commanding officers and to get rid of a great many regimental courts martial, it would be a great advantage.

1301. Perhaps, Sir, you will allow me to call your attention to a Return which I have here of the total number of courts martial for the years 1874, 1875, and 1876, which has been presented to the House of Commons, and by which it appears that there has already been a reduction of 385 in the number of regimental courts martial; as I understand, Sir, if the powers of commanding officers were extended so that they might sentence a man to 21 days' imprisonment, you see your way to a considerable reduction even of that number?—Yes; I think so. That I think is a very great advantage, and that is one of the reasons why I am so anxious to see those powers extended.

1302. The third question which I am desired to ask you is, whether, as regards officers who sit upon courts martial, the divided responsibility which results from a number of officers having to decide each case may not tend to induce officers to rely too little upon their own judgment?—You might reduce the number of officers who sit upon a tribunal of that sort; but I think every officer who sits upon a court martial takes a good deal upon himself, and I have no reason to suppose that even the junior officers do not take a very independent line. In fact, I know that very often they are very difficult to deal with; sometimes the senior officers will take different views from the juniors, and yet the junior will hold his own; and I am not sure that the fact of his doing so is not an advantage; it opens his mind, so that when he rises in his profession he knows how to deal with cases of that sort. I do not think that there is any disadvantage in it.

1303. And as the junior officer always gives his opinion first, it is not biassed by the opinions expressed by his superiors?—I do not think he is biassed at all. Of course a very young man would naturally listen to the suggestion of an officer of more experience, but I think the junior officers are, as a rule, very independent in their opinions.

1304. I desire now to ask your Royal Highness some questions upon my own account; with regard to what the Chairman asked you as to the remission of sentences of imprisonment, is it not in the competence of general officers who convene district courts martial to remit sentences in the same way as Her Majesty, upon your Royal Highness's advice, remits the sentences of general courts martial, and as commanding officers of regiments remit the sentences of regimental courts martial?—Exactly in the same way; they remit them to any extent they think fit. Whoever the confirming officer is he has the power of remission; whether it is a colonel of the staff, or whoever it is.

1305. May I ask, Sir, whether you are in favour of what the Royal Commission recommended as to the minor punishments being given to non-commissioned officers when tried and convicted, instead of their being reduced to the ranks?—

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We have not done that. It is a very difficult question to deal with; there is a great deal to be said for it, but there is also a very great deal to be said against it, because a non-commissioned officer being very much on a level with the men, has to be very free from blame to give him an authority which does not come from his status. If a non-commissioned officer gets blamed or even severely reprimanded too often, he loses all influence with the men, and if you punished him I confess that I think the men would lose all respect for him. I do not see how you could keep up the respect of the men for the non-commissioned officers if you gave them minor punishments, and left them in a position of responsibility. A non-commissioned officer is always in a responsible position, and if the men know that that man has been punished for any offence, although it may not be a very serious one, there is always some feeling that they may swagger before him or insult him, or do anything that they like, and I think his position would be lost.

1306. Whereas the commanding officer has the power, if a man is worth making a non-commissioned officer, immediately to re-make him a non-commissioned officer?—At any time. He may be broken one day, and made again the same evening, and it frequently happens that that is done. A man may get into some scrape, and it is impossible to prevent his being tried; but he is so good a man that you are glad to give him another chance, and you make him again at once. Of course he is in the same position as he was in before, but still he has been punished properly and regularly, and whatever has happened it does not hang to him.

1307. You think, Sir, that it is best to leave the punishment as it is, and to leave the appointment of the man to the commanding officer?—Yes.

1308. With regard to the volunteer force, may I ask you, Sir, whether you are of opinion that it is advisable to extend the application of the Mutiny Act and the Articles of War to volunteers off parade?—I should have thought that they might apply to them on parade; but off parade I cannot imagine that it would be desirable, because I should think it would have a very deterrent effect upon the volunteers.

1309. You think that it would injure the recruiting so much as to be inadvisable?—I should imagine so; I do not think that the volunteers can be placed upon the same footing as the militia. In the case of the militia it is quite a different thing; I think the Mutiny Act and the Articles of War ought to apply to them when they are off parade, but I do not think that you could apply them in the case of the volunteers except when on parade, as is the regulation now. The volunteer, the moment he is on any duty, even for drill, is under the Mutiny Act, and I think that ought to meet the case. Even when a man goes to Aldershot for a week of his own free will, I consider him on duty during the period that he is there, and he ought to be under the Mutiny Act; but I am talking of men who may be walking over Westminster Bridge now, and who may be volunteers in the evening; I do not think you could put them under the Mutiny Act unless they were on parade; but when a man goes to Aldershot he is for that time on parade.

1310. The commanding officers of volunteer

Mr. Hayter—continued.

regiments have only power now to inflict two punishments, viz. the punishment of arrest during parade and dismissal from the corps after parade; I only wish to ask your Royal Highness whether you think it is advisable to extend those powers?—I should not say so; in any duty of any sort or kind, however trivial, that he may have to perform, a volunteer should always be under the Mutiny Act, but I do not think that it would be desirable to put him under the Mutiny Act except when he is actually doing some duty. In duty I include being attached, for instance, to the force at Aldershot for a week, or a fortnight, or a month; if he is attached there during the whole of that period, I consider him on duty.

Viscount Hinchinbrook.

1311. Considering that the power of the commanding officer extends now to giving a man 28 days' confinement to barracks, do you see any reason, Sir, against extending the power of imprisonment to 28 days?—Of course, I should not personally object to his having the power of giving a man 28 days; but I think that 21 days is enough; I should have just as much confidence in a commanding officer doing what was right if he had the power of giving a man 28 days, as if he had only the power of giving him 21 days, but I think that anything beyond 21 days had better be given by court martial.

Mr. Parnell.

1312. With reference to the question of breaking a non-commissioned officer, would it not be desirable in some cases to give the commanding officer the power of inflicting the least punishment in the scale of punishments on a non-commissioned officer, instead of breaking him; such as the punishment of forfeiture, fine, or stoppage. In some of the cases which have come under your Royal Highness's notice, where a non-commissioned officer has been broken and remade almost immediately, would it not have been desirable if the commanding officer had had power to inflict punishment No. 7 in this scale, instead of the punishment of breaking?—As I have explained, there is a great deal to be said for it, but there is a very great deal to be said against it. It seems almost a matter of instinct amongst men; you have no idea how men are affected by having anybody over them who they know has been punished for some small offence, and they do not like it. A non-commissioned officer himself loses caste by being punished; you may ask whether he does not lose caste more by being broken and remade; I do not think he does. It is a curious thing that he does not lose his authority to anything like the same extent if he is broken and remade, as if he is punished and left still in the position of a non-commissioned officer. As the non-commissioned officers must be so much mixed up with the men, anything that would make a non-commissioned officer lose caste is a very serious thing; and, therefore, as far as I am concerned, I cannot help feeling that the balance of advantage is in not inflicting minor punishments on non-commissioned officers.

1313. Does not your Royal Highness think that if the discretion that I have suggested were given to commanding officers it would generally be exercised judiciously, so as to avoid the disadvantages to which you have referred?—You might give a certain latitude, no doubt; but, at the



*Mr. Parnell*—continued.

the same time, I think it would be disadvantageous to the general discipline of the army if it were done to any extent; and I should not desire to do anything which might shake the confidence of the men in the authority of their non-commissioned officers, because it is the authority which we want to maintain. A non-commissioned officer is one day on an equality with the men and the next day he is their superior, and has very often to tell them to do things which we know must be distasteful. Therefore, we must maintain that authority, and I do not see how it is to be maintained if we give any punishment to a non-commissioned officer short of breaking him, even though you may make him again immediately.

*Mr. Merewether.*

1314. Does your Royal Highness think it desirable in this draft scheme to retain or omit the existing distinction between the sentence on an officer and that on a soldier?—I think it desirable to retain it.

1315. In the Articles of War there is a distinction drawn throughout in the form of sentence on officers and soldiers; in the Bill it is proposed to class them all under the head of "Persons subject to Military Law"?—My opinion is decidedly that the old arrangement is much the best. I do not think it is a good thing to put the two classes on a level, because I apprehend that it would make a considerable difference in the authority which the officers would exercise over the men.

*Mr. John Holms.*

1316. Your Royal Highness has been examined to-day more upon the question of punishments; I think that when you were good enough to give evidence before this Committee a few weeks ago you pointed out your desire to reduce the causes of these punishments?—I did.

1317. Of course courts martial are very numerous?—Yes, much too numerous, I think.

1318. I think you, Sir, have expressed an opinion that many of the crimes arise through acts of insubordination, committed, perhaps, by young soldiers, even though they may be otherwise of good character?—Yes.

1319. And that those acts of insubordination are, in many instances, attributable to the want of tact and proper manner on the part of non-commissioned officers?—No doubt.

1320. Is it not also the case that inexperienced non-commissioned officers are sometimes too prone to confine men for trifling faults of temper and trivial offences generally?—There is no doubt about it.

1321. The frequency of these punishments by non-commissioned officers for petty offences in the first six or 12 months of service of young soldiers is a very fruitful cause, I suppose, of dislike to the service, and also one of the causes of the numerous desertions which take place?—Yes, I think it is.

1322. Your object, I suppose, Sir, in suggesting that the commanding officer should have power to deal more summarily with these trifling cases, is, that they may be dealt with as quickly as possible, so as to save the risk and trouble, and of course the obloquy, of a court martial?—Certainly.

1323. I think your Royal Highness is of opinion that it would be well for the commissioned

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officers to come more closely into contact with the non-commissioned officers in their duties; so that they might really act a little more with them, and know the condition of their companies better than they do?—I think they do. I assure you that I think the officers of the army know better than anybody else the feelings of the men. There is no army that you can name where the contact of the men and the officers is so great as in the English army; and all the foreign armies are quite astonished at the amount of supervision that our men receive compared to their own.

1324. In your Royal Highness's opinion does a captain in the British army come as closely into contact with the recruits as a captain, say, in the German army?—They come in contact with them in a much better way, because, I think that the plan of an officer knocking a recruit about, and telling him to hold his butt here or there, is anything but a good thing; but in the English army the officers look after the men's interests, and do what is just and right by them; and that is, I think, a much better kind of contact than the mere drill. In foreign armies the officers drill their own recruits, and I do not think that it is at all advantageous to discipline.

1325. Does your Royal Highness think it would be objected to by officers if they were called upon to do more of that work by themselves?—I think the officers of our army do a great deal more of the interior economy work than the officers of foreign armies. I am quite aware that the officers of foreign armies have a great deal more drill than we have, but it is mechanical drill which I think it is hardly the province of an officer to superintend. Every officer ought to be able to do it, but I do not think that the system which is in vogue in foreign armies, of making the officers responsible for the drill of squads, is a good thing.

1326. I understood your Royal Highness to say, on a former occasion, that it would be well for the officers to act a little more with their non-commissioned officers in matters connected with the treatment of young soldiers; my point is simply, whether your Royal Highness does or does not think that the connection between the officers and the non-commissioned officers would have the good effect of enabling them to see more clearly the state of affairs, and, therefore, perhaps, of getting rid of some of those difficulties to which reference has been made?—I may be in error, but I was not aware that I had ever said that there was any want of connection between the young soldiers and the non-commissioned officers. I said that the youth of the non-commissioned officers had perhaps produced additional crime, because, having very little experience, they might very often find fault with men more roughly or unnecessarily than old non-commissioned officers would do.

1327. I think your Royal Highness said that a commanding officer in daily intercourse with non-commissioned officers should impress upon them the importance of using special discretion in dealing with young soldiers; from your Royal Highness's explanation now, I infer that you do not mean that officers should work with them, but that they should advise non-commissioned officers to be careful and considerate in their treatment of recruits?—Just so.

1328. There was a considerable discussion at the

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the beginning of the year in the House of Commons upon the difference in the scales of punishment in time of peace and in time of war, applying chiefly to flogging. I believe many officers held the view that it was an unwise thing to make any difference between punishments in time of peace and in time of war; that is to say, that when the soldiers were in the face of the enemy it was a mistake to make the punishments more severe; the Committee have come to a resolution that there should be a distinction between the scale of punishments in time of peace and the scale of punishments in time of war. I, as a civilian, and I suppose some other Members of the Committee, are not very well informed as to the necessity of maintaining the punishment of flogging in the face of the enemy; I do not know whether your Royal Highness would be inclined to give any opinion upon that subject?—I am one of those who do not like to flog anybody if it can be avoided; but I do not think you could dispense with the power to do it in the face of the enemy, because you want something that has a summary effect; you cannot imprison the man, and I do not see what you could do with him. You might deplete the army if you went on sending men to prison just at the time when you wanted more men. Very often those men who commit offences are very good soldiers; but at the same time they must be punished. If they were not punished, and if through the consequent laxity of discipline any loss occurred, what would be the feeling of the country? Everybody would blame the authorities for not keeping up discipline. How are you to keep up the discipline of the army unless you have summary powers, and what other summary powers can you have?

1329. During the Crimean War and the Abyssinian War is your Royal Highness aware of many cases of punishment by flogging?—I am not aware that we have had any of late at all. During the Crimean War, of course, there were cases.

1330. If we got rid of that punishment I suppose that we should come to the more cruel one in the German and French armies, of simply putting the man to death?—My own impression is strongly that the severity of the punishments in time of war in foreign armies is very much in excess of our own.

Major O'Beirne.

1331. I wish to ask your Royal Highness if you think that the commanding officer of a regiment is, under any circumstances, at liberty to put pressure upon the members of a court martial upon revision of their sentence, to give a sentence of greater severity?—Certainly not. Up to a certain time no doubt we revised the sentences of courts martial, with a view of giving more severe punishments; but since the Royal Commission on Courts Martial sat, that has been practically done away with, and we now seldom revise the sentence of a court martial with the view of giving a more severe punishment.

1332. Then your Royal Highness is not aware that it is the practice that when a court martial does not give a sentence that the commanding officer considers sufficiently severe, he orders this court martial to re-assemble and to try every case for three or six months; it is not given as a punishment, but the pretext is that those officers may become acquainted with the duties of courts

Major O'Beirne—continued.

martial?—If a commanding officer thinks that an officer is not competent, or that he shows want of judgment and tact, he may order him to attend courts martial with the view of his gaining more information; but he has no power to order an officer to give any sentence that he does not think fit to give.

1333. It is the practice in the service, if a sentence is not sufficiently severe, to order the court martial to try every case for the next six months; it is not given ostensibly as a punishment, but ostensibly for the reason that the members of the court may get better acquainted with their duties; but in reality it is a punishment?—I am not aware of it.

1334. Is not your Royal Highness of opinion that some order ought to be given to commanding officers to prevent their having recourse to this practice?—I never heard of it; a commanding officer is responsible for his regiment; and if he thinks that an officer in his regiment shows a want of experience and knowledge, or anything which requires correction, he is in a position to direct that the officer shall obtain that knowledge. Supposing that a young officer was found to be so ignorant about the Articles of War or the Mutiny Act that his commanding officer thought that he ought to attend courts martial in order to gain information, of course the commanding officer has the power to order him to attend courts martial, not as a member, but as a spectator, to gain information, but beyond that he has not the power to order it.

1335. As the practice exists at present, it is not limited to any degree of service; an officer in command of a regiment can order a member of a court martial, though he may be of 15 or 20 years' service, to sit upon any court martial for three or six months if he is displeased with the sentence that the court martial has given, and if they will not alter the sentence on revision?—Such a practice may exist, and as the honourable Member says so, I suppose it is so; but I do not know it.

1336. It exists in India more than in this country; in this country, I am happy to say, it is rare, but in India it is a very common practice?—I was not aware of it.

Sir Alexander Gordon.

1337. With reference to the question which has been raised as to the Judge Advocate General's Department drawing the attention of the Commander in Chief to questions of discipline; if that power were given by statute, would it not, Sir, in a certain degree remove the responsibility for the discipline of the army from the Commander in Chief?—I think so. I intended to convey in my reply, that though I see no reason to object to it, at the same time I think it is better to have it as it is now, because the two duties are perfectly distinct. The Judge Advocate General's Department points out the law, and the Commander in Chief, or the officer who confirms the court martial, administers the discipline; and so long as he administers the discipline within the law, I think it is better to leave to the Executive those details which they ought to be able to deal with, because the Commander in Chief ought to know as well as anybody else whether the punishment is too severe or not. Of course, if it was wished, there is no reason why it

*Sir Alexander Gordon—continued.*

it should not be done, although I should prefer its being left as it is now.

1338. Am I right in supposing that the responsibility of the Judge Advocate General to Parliament is confined solely to legal points?—That is the way in which I have always viewed it.

1339. May I ask your Royal Highness whether you approve of the great change that has been made in the Bill which has been submitted to us, by which there is a different code of punishments for the army when on active service, and when not on active service?—I do not like it; I should prefer its being always on the same footing. Of course the application on service would differ from the application in time of peace; but I think there should be one code for peace and war. That is my own personal feeling on the matter.

1340. May I ask, Sir, who is responsible to Parliament for the proper carrying out of the provisions of the Mutiny Act with respect to European troops in India?—The Secretary of State, and under the Secretary of State the Commander in Chief at home, and the Commander in Chief in India, of course, in their relative positions.

1341. Which Secretary of State?—The Secretary of State for War.

1342. But is it not the case that the Secretary of State for War cannot interfere with the decisions of the Secretary of State for India?—The discipline of European troops in India is exactly on the same footing as at home.

1343. Is it not the case that decisions are given by the Secretary of State for India with regard to the army in India, which are not cognisable by the Secretary of State for War?—Only I think on financial matters.

1344. If general courts-martial do not come to the Secretary of State for War's office or the Commander in Chief's office, they cannot be cognisant of them?—No; but I apprehend that the Commander in Chief in India is responsible for the army in India, as the Commander in Chief at home is responsible for the army at home and in the colonies.

1345. But the Commander in Chief in India is responsible to the Secretary of State for India, is he not?—No, he is responsible to the Secretary of State for War, so far as I understand. I always understood that the Mutiny Act and the Articles of War ruled all European cases in India with regard to the Imperial Army just as they do at home; and, therefore, I apprehend that the Secretary of State for War is responsible. The general orders that I issue all go to India, and are issued to the troops there.

1346. Is not your Royal Highness aware that no general order that you issue is of any value whatever until the Governor General by general order has authorised it?—That may be; but it is never questioned, and is always admitted. Any general orders for the army apply to the European troops in India just as much as they do here. There may be special orders which do not apply to India, but the Governor General of India is so supreme an authority that nothing I apprehend can be done in India without his concurrence and sanction.

1347. Is your Royal Highness aware that the Queen's Regulations of the army, which officers have put into their hands for their guidance, are

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*Sir Alexander Gordon—continued.*

of no effect whatever in India, and that they are ignored in India, and not allowed to be quoted, and that Jamieson's Code, as they call it, a book of eleven volumes, takes the place of those Regulations?—I am not prepared to say.

1348. Your Royal Highness gave evidence before the Courts-Martial Commission which sat in 1869, with regard to the value of courts of inquiry, that you considered them necessary for the purpose of inquiry, and you were asked at Question 4278: "Does it happen sometimes that an officer is recommended to leave the service after a court of inquiry has been held, and that upon applying for a court-martial the court-martial is refused him," to which your Royal Highness answered, "Certainly." The question was then put: "That is the exercise of the prerogative of the Crown, is it not?" and your Royal Highness's answer was: "That is the exercise of the prerogative of the Crown." May I ask your Royal Highness if, as courts of inquiry are in this manner recognised in the army, it would not be desirable that regulations for their guidance should be framed?—I do not see how you could regulate their guidance any more than you do now. It is impossible to foresee what cases they may have to deal with, and the cases as they arise are brought before them. In some cases they are requested merely to sift the evidence, and let the result be known to the convening authority; in other cases, they are called upon to give an opinion; but unless they are called upon to give an opinion they do not give an opinion; and as to laying down any further regulations that they are to sift the evidence, and tabulate it, and bring it in shape before the authority that convenes the court of inquiry, I do not see what other regulations you could make.

1349. There is a regulation which is in use in the Colonial service, an extract from which I will take the liberty of reading to your Royal Highness: "The offence with which an officer is charged must be communicated to him in writing, with the grounds upon which it rests; and he will be required to answer the charge in writing." May I ask your Royal Highness whether it would not be desirable and just that the officers of the army should have the same opportunity of meeting an accusation made against them, by having the charge communicated to them in writing?—It may have occasionally happened that a man may not have known what was said against him, and that he has not had it in writing; but I am not aware that they have not all the information that they can desire. They are always present at the court of inquiry, and they have the power of making any explanation that they think fit.

1350. As your Royal Highness admits that it may not be always the case, would it not be desirable to lay it down as a rule, that any officer accused of an offence should have that offence set forth in writing, and should be given an opportunity of explaining his conduct?—He always has an opportunity of explaining his conduct. It sometimes happens that an officer says that he would rather not explain, but leave it to be explained hereafter if he thinks he is to be tried by court-martial; but I never heard of a man being refused an opportunity of explaining his conduct. In fact, the object of a court of inquiry

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inquiry is to ascertain the facts of a specific case against an officer.

1351. But the question is, whether the officer whose conduct is inquired into ought not to be entitled to have the grounds of the charge furnished to him in writing?—I did not know that it was not done; but I do not see that it makes much difference whether it is done in writing or whether he sits there and hears what is said against him. Nothing is said or done that does not come to his knowledge; and he has an opportunity of dealing with it in any way he thinks fit, either by direct denial, or by explanation, or by calling witnesses, or in any way that he may deem the most advantageous.

1352. But if the officer has not got in writing the offence which he is supposed to have committed, how can he properly defend himself from the charge which is brought against him?—"Offence" is a strong word. A circumstance may have occurred which is not an actual offence, but yet which is a very irregular and improper proceeding. It may be only hearsay. I do not think a man is in a worse position by having the matter examined into in his presence than by having it in black and white. As I have always said, the court of inquiry has merely the object of sifting the evidence.

1353. We have it in evidence from your Royal Highness, that an officer may be removed from the army, under the prerogative of the Crown, in consequence of a court of inquiry, without his having known what his offence was?—The authority that removes him is the Crown, by the advice sometimes of the Secretary of State, and probably on the recommendation of the Commander in Chief. Therefore the power that removes him is the Crown, under the advice of the Government, but not the court of inquiry. The court of inquiry only gives the information which the authority that has the power to deal with the case wants, in order to be sure that what he is doing is right.

1354. If the Crown has not the power under its prerogative to try an officer or a soldier by court-martial, except the power given by the Mutiny Act, surely it is rather a stretch of power to hold a court of inquiry which may have the same result as a court-martial, because the officer may be removed from the service under the prerogative of the Crown without his having any opportunity of defending himself?—It is the prerogative of the Crown, on advice, to dismiss not merely a military officer, but anybody. When a question arises which requires consideration, and it is difficult to sift evidence, a court of inquiry has this value, that there are certain persons selected who are competent (and we must take military officers because we have no authority over anybody else), and those persons sift the evidence, and bring it before that authority which can afterwards deal with the case; and which need not take the slightest cognizance of anything that happened before the court of inquiry. It may result that some man is dismissed, but that is not because there has been a court of inquiry. That has been the mode in which the person who has the power of advising dismissal has dealt with it with reference to the specific case before him.

1355. That dismissal is the same punishment

*Sir Alexander Gordon*—continued.

as could be given by a court-martial, is it not?—The dismissal is entirely upon the authority of the Secretary of State, or on the advice of the Commander in Chief, as the case may be, who recommends Her Majesty to dismiss such and such an officer. It has nothing at all to do with the court of inquiry; the court of inquiry is entirely within the province of the person who wishes to know how the matter stands.

*Colonel Mure.*

1356. It passes no sentence?—No, not at all.

*Sir Alexander Gordon.*

1357. We quite admit that the Crown has the power to tell any officer or soldier that his services are no longer required; but has the Crown the power to say to an officer or a soldier, "You have been guilty of misconduct, and therefore you are dismissed"?—I do not consider the court of inquiry a court at all. It is a mere body of individuals brought together in order to assist in getting clear evidence in reference to any particular point.

1358. Then does your Royal Highness admit that it is just to the officers and soldiers of the army, that when they are accused of any offence they should have a right to know what the accusation is, and to have the means of defending themselves?—They always have.

1359. The Courts-Martial Commission recommended that a text book should be prepared for the use of officers of the army; is your Royal Highness aware whether anything of that kind has been published?—I am not aware that anything of that kind has been done. At present we have Simmons and other books, but a text book would be of great advantage. If this Bill were passed, no doubt it would be the text book for the army.

*Sir Henry Havelock.*

1360. Going back for a moment, Sir, to the question as to giving increased powers to commanding officers, your Royal Highness does not think that there is any practical inconvenience at the present time from the power of commanding officers being limited to the infliction of seven days' imprisonment?—No. The increase of the commanding officer's powers would reduce the number of courts-martial, and that, I think, would be a great advantage.

1361. It is proposed solely with the view of reducing the number of courts-martial?—That is the great point.

1362. What would your Royal Highness think of the suggestion in that case to a certain extent to guard the rights of the prisoner or the accused, by giving him the power to demand that the evidence should be taken upon oath?—As I have already stated, I think the cases that would be dealt with by commanding officers would, as a matter of fact, be comparatively trivial cases, small offences; and I should not have thought it necessary to require an oath upon such matters, because it would be rather lowering the value of an oath. There is no reason why it should not be done, but I should not have thought it necessary. I guarded myself by saying that I think that any serious offence ought still to be tried by court-martial.

1363. If

Sir Henry Havelock—continued.

1363. If the accused had the privilege of asking that the evidence should be taken on oath, would it not be likely to diminish very much the chances of there being a large number of appeals to courts-martial?—It might have that effect, no doubt; but I should have thought that the exercise of discipline on that principle would be so just and fair that it would be hardly necessary. At the same time, of course, if it is deemed essential, there is no reason to object to it, only I do not like to diminish the importance of an oath, and that if an oath were taken on all trifling cases, such as a little falling-out in a stable, or horses not being properly cleaned, or a man losing his temper, it would diminish the importance of the oath, which, I think, would be a pity.

1364. At present the distinction between the investigation by a court-martial and the preliminary investigation before a commanding officer, of course, is, that the court martial has, as it were, the sanction of sworn evidence before it?—Yes.

1365. Does not your Royal Highness think that if the power of a commanding officer were increased in that way, it would, to a certain extent, give greater force to his decisions and greater satisfaction to the men dealt with, if they had the power of asking that the evidence should be taken on oath?—My own opinion would be that the men would not care about it one way or the other, and that is one of the reasons why I did not think it of much importance; but, of course, if the men did care about it, it would probably be better. I think the men are quite satisfied; they have an opportunity of answering the evidence, and there is very little doubt about those cases when they arise.

1366. A question was put in a former part of the proceedings of this Committee on which I should like to have your Royal Highness's opinion; I am afraid that an impression has been conveyed that it is the practice of the army to restrict the power of soldiers making complaints; what would be your Royal Highness's opinion upon that subject?—I am sorry to say that commanding officers are occasionally induced to do so, and I think it is extremely to be deplored, though it is very difficult to check it. I think that soldiers ought to have the fullest power to make complaints. A good deal of the restriction really arises amongst the men themselves; there is a sort of *esprit de corps*; regiments do not like men to complain; they always think it is a reflection on their state of discipline; and therefore the men themselves object to an individual man complaining. But I think it is a great pity that there should be any restriction put upon the right of complaint, and every now and then I certainly am afraid that the authorities may check it more than they ought to do. I think it ought not to be so, and whenever I hear of it it is taken very serious notice of.

1367. It would be entirely contrary to your Royal Highness's opinion and authority that a man should be tried, for instance, by court-martial for making a complaint which was substantial in itself, and which was respectfully worded?—Certainly; if a man makes a complaint the general officer inquires into it, and it is only if the general officer's decision is not accepted by the man, and the man says, "I appeal to a court-martial," that a court-martial is held.

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Chairman.

1368. I would remind your Royal Highness that it is only in respect of pay and clothing, and not in respect of ill-treatment of any other kind?—That may be so.

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1369. The crime of desertion or fraudulent enlistment is looked upon differently by popular opinion in this country from what is really the fact; is it not the case that desertion in foreign armies, where the men are taken for compulsory service, is a totally different thing from desertion in our army, which is simply a species of discreditable and disgraceful fraud against the public?—Certainly, I think they are quite different.

1370. There is reason to fear, is there not, Sir, that on account of that popular delusion, as I may call it, that desertion is punishable in some extreme cases with death; there is a sort of sympathy amongst people unacquainted with the circumstances of the punishment for the crime of desertion, which has no foundation in fact?—I think it has no foundation whatever.

1371. It is the case, is it not, that the crime of fraudulent enlistment has increased to a considerable degree since marking was abolished in deference to this popular prejudice?—There is no doubt about it.

1372. Without in any degree desiring to return to the practice of marking, which has been condemned by Parliament, and which is now obsolete, is your Royal Highness of opinion that some means of checking fraudulent enlistment might be devised by such marking as is carried out in the military vaccination of soldiers?—I think it would be a very good plan; and I see no reason why it should not be adopted.

1373. Do you think there would be any hardship at all if that were done?—I do not think there would be the slightest hardship; and it would draw the attention of the medical officer to the fact that a man had been a soldier, because he had been vaccinated in a particular way.

1374. With reference to the mitigation of sentences, it is the practice, is it not, throughout the army that general officers, under instructions from your Royal Highness, watch very closely the conduct of military prisoners, with the direct view of their sentences being mitigated?—Very much so indeed.

1375. And that has a most beneficial effect, has it not?—Most beneficial.

1376. With regard to the limitation of sentences by courts-martial, it is the case, is it not, that there is practically a comparative scale laid down for the guidance of courts-martial, that is to say, recommending in first cases of desertion that they should not give a heavier punishment than 56 days, in a second case than 84 days, and in a third case than 168 days?—That is so.

1377. And the inclination of courts-martial is in the main to abide by that scale?—I think they generally abide by it, but of course every now and then they do not; and then I do not think you can coerce them. The less you interfere with them, and the more independent the courts are, the less reason there is to complain either on the part of the individual soldier tried or on the

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the part of the public, who wish to see justice done.

1378. With regard to the probability of decreasing desertion, if it could be done without returning to the old system of marking, would your Royal Highness be in favour of decreasing it by some sort of marking?—I think it is very desirable.

1379. And, further than that, you think, Sir, that desertion might be very considerably checked by making a portion of the punishment the transfer of the soldier to a station where he would not have a chance of deserting?—He might be sentenced for general service, and then the authorities might apportion him to whatever regiment the requirements of the service may point to as being most desirable.

1380. There is an impression I am afraid abroad, which prevails to a certain extent in the House of Commons, that it is a more merciful act to the non-commissioned officers to have that intermediate scale of punishment, instead of reducing them to the ranks; the feeling of the army is, of course, entirely the other way?—Entirely.

1381. And it arises, does it not, from their desire to maintain the dignity and the position of the non-commissioned officers?—Certainly.

1382. And from no desire to be harsh to non-commissioned officers by saying that a slight offence shall be visited by the ruin of their career?—Not at all. A non-commissioned officer begins as a private soldier, and one day he is on an exact equality with a number of men, and performing the same duties, and the next day he is in a position to check those men, and find fault with them, and report them. It is very difficult to carry that out without every now and then some very awkward feeling arising, and unless you maintain the high status of non-commissioned officers of the army, as you have hitherto done, you will do great mischief to the army generally, and you will not benefit the non-commissioned officers at all. I am quite satisfied that if a good man has committed an offence, and the authorities are obliged to break him, it is better that he should be broken and made again, perhaps the same day, than that he should undergo a minor punishment and so appear to be lowered in the eyes of the men who have been his equals.

Colonel Mure.

1383. At present there is no discretion left to a court-martial in the punishment of an officer for drunkenness on duty; the 76th Article of War says: "If any officer shall be drunk on any duty under arms, he shall, on conviction thereof before a general court-martial, be sentenced to be cashiered." In this new Bill that we have before us, it is provided that he need not be cashiered, but that an intermediate punishment may be given to him; will your Royal Highness give us your opinion upon that point?—I think that an officer who is drunk on duty and under arms ought to be cashiered without any question. I should, therefore, prefer the old law as it stood before.

Colonel Mure—continued.

1384. Under the old system there is no mention made of trying an officer for being drunk at any other time; but he is tried under the other clause which provides for trying an officer who is guilty of conduct unbecoming an officer and a gentleman?—Yes.

1385. Under this new Bill it is proposed that every officer guilty of drunkenness, whether on or off duty, shall be liable to be tried?—I object to that very strongly, because I do not think you ought to assume that an officer, as a gentleman, can be drunk on or off duty. I think it is far better to let it stand as it was before; "Who is guilty of conduct unbecoming an officer and a gentleman."

1386. This cuts both ways; it recommends that if an officer happens to be seen somewhere, and he is reported upon, he is to be tried; would your Royal Highness recommend an Act of Parliament to replace that?—No; I do not think that ought to be in the Act.

Sir Alexander Gordon.

1387. The object of the change is simply that it may not appear that a soldier is liable to be tried for being drunk off duty, and that an officer is not liable?—I presume that is so.

Colonel Mure.

1388. I understand your Royal Highness to say that, as a general rule, you wish to see a distinction drawn between the position of an officer and the position of a soldier?—Quite so; I think it would be very much to be deplored that they should be reduced to the same position.

The Judge Advocate General.

1389. Your Royal Highness is aware that there is a great difference of opinion as to what exactly constitutes the crime of desertion; in your opinion, Sir, would there be any objection in most cases to substitute in the charge the words "absence without leave," for "desertion," leaving it to the court, under aggravated circumstances, to pronounce a commensurate sentence?—We have "absence without leave" now, as well as "desertion"; they are two distinct things. It must depend entirely upon the circumstances in which the man is absent; a man may be absent five minutes, and he is a deserter. For instance, take the case of men in Canada in former days when we had troops there; a man might have been ten minutes absent; he had sold his kit, and was going to get across the frontier, and was taken; of course he would be tried as a deserter and punished accordingly. Another man may be absent for a month, and we know he is in some locality where he had better not be; he is on a lark; that would be absence without leave. That latitude we have now, and I think it would be better to leave it where it is, because the same amount of absence may be construed, according to the amount of knowledge of those who have to deal with it, in two distinct ways.

Sir HENRY THRING, K.C.B., re-called; and further Examined.

*Chairman.*

1390. Is there any point left open in regard to Clause 76?—Clause 76, for my purpose, is simply a consolidation, and will require, like the other clauses, a very careful revision by the authorities conversant with prisons, to see that my alterations are correct.

1391. Clauses 76, 77, and 78, are simply consolidation, I suppose?—Simply consolidation.

1392. Have you any remark to make on Clause 80?—That is exactly a verbatim copy of the existing 164th Article of War.

*The Judge Advocate General.*

1393. It makes that Article of War statutory?—It makes it statutory. It is too important a clause to alter the wording; it has been acted upon ever since the power has existed at all.

*Chairman.*

1394. Coming now to Clause 81, which has reference to the Articles of War, what have you to say as to that?—Of course we shall have to alter it if the commanding officer has increased powers given to him. The commanding officers' powers rest upon the 50th Article of War. I submit that there is great doubt as to the power of commanding officers to send a man to one of Her Majesty's prisons, and that I should not be justified as a draftsman in not recommending the Government to put it into the statute. The whole object of this clause, in so far as it relates to the commanding officer, is to make statutory the power of sending prisoners to the Queen's prisons.

*Sir Alexander Gordon.*

1395. Is not the latter part of Clause 81 an entirely new provision?—It is not intended to give more power, but merely to remove a doubt. The only reason why I put in this Clause is to prevent the Articles of War being declared *ultra vires*.

*Chairman.*

1396. At present, if an Article of War is made which is inconsistent with the Statute, that Article of War would be invalid, but this Clause removes the subordinate situation in which the Articles of War have hitherto been in reference to the statute, does it not?—It does not go quite to that extent, because the courts construe this sort of covering power only to apply to matters of comparative detail. This Clause is sometimes struck out in the House of Commons, and sometimes it remains in, but I usually put it in upon an important question like this to remove doubt.

1397. Supposing that an Article of War was made inflicting the punishment of death; everybody knows that now-a-days such an Article of War would be invalid; but under this Act, an Article of War might be made, making some crime or other punishable by death, and then it would be just as good as the statute itself?—I will take it out if the Committee wish; but the courts construe this description of covering clause not to apply where the two things are inconsistent to that extent.

0.111.

*Chairman—continued.*

1398. But supposing that there is some crime not made capital by the Mutiny Act at present, if you were to make an Article of War making such crime capital, it would be clearly invalid?—That is the very thing which they claim for the Articles of War, and which the Articles of War are said to do at the present moment.

1399. It was the opinion of Lord Hardwicke given in the middle of the last century, that you could not create a new capital offence by an Article of War, but it seems to me that under these words you might create a new capital offence under an Article of War?—I will take out the words.

1400. Then what you contemplate is, that the Articles of War hereafter will apply to matters which are not of a penal character, and even to matters of a penal character, supposing that there has been anything overlooked in the statute?—That is really all that I intend.

1401. Any hole in the statute that has not been hit may hereafter be filled by an Article of War?—Just so; there cannot be many holes in the offences.

1402. Does Clause 82 contain any variation of the existing law?—That I believe retains the existing law.

*The Judge Advocate General.*

1403. With regard to Clause 82, confusion has arisen in this way: that the relief to the wife and children of a soldier is always administered now in the War Office, under the 177th Article of War, and not under the statute; is there any reason why it should be repeated in the statute?—The clause about bastards was drawn by me some year or two ago. There was great difficulty about bastard children.

1404. But it covers legitimate children as well?—All that is necessary is to strike out the last paragraph of Clause 82.

*Chairman.*

1405. Have you anything to say upon Clause 83?—It was settled that I was to put in the last part of the clause as a substantive offence, and to omit the part as to the Secretary of State and the Paymaster General of the Army.

1406. As to the persons subject to military law in Clause 84, we had a long discussion upon that, as to whether or not we were to put camp followers into that category, as they are in India; and the Committee decided that they should be included in the same way as in the Indian law?—Quite so.

1407. Then, I suppose that you will have to introduce words into this clause for that purpose?—I have, in fact, re-drawn the whole of this clause, but it is not completed.

1408. You have re-drawn it upon the principle of including the camp followers on active service?—I think my instructions were to include camp followers on active service.

1409. I think our resolution was that the Indian rule should be applied to the English army?—Yes.

1410. How is Sub-section 16, as compared with

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*Chairman—continued.*

with the present state of the law?—It is extremely difficult to ascertain what the exact state of the law is; the question is a very serious one. The Commander in Chief, I apprehend, meant that they should be under the Mutiny Act to all intents and purposes; in other words, that if a volunteer struck an officer when on duty with the regular forces, he should be subject to imprisonment or penal servitude.

1411. Do you imagine that Sub-section 16 represents the present state of the law, or alters it?—It represents the state of the law, but it does not apply to the men, which is the important point.

1412. What do you propose to do with reference to the men?—The question is submitted to the Committee. The present state of the law, in my opinion, is that you cannot punish a volunteer except when he is on actual service, beyond confining him during the time when he is serving with the troops. For instance, supposing that he is brigaded with a regiment, I believe you could order him into arrest, and you could keep him under arrest during the whole time that the troops are exercising; but, in my judgment, you are bound to discharge him at the end of the time. It is suggested that that is not nearly severe enough.

1413. What do you mean by "actual service"?—Supposing that there was an invasion, and that the volunteers were called out, they would be under the Mutiny Act as all other troops are.

1414. But you mean to say that when they are at Aldershot they are not on actual service?—No, I think not.

*The Judge Advocate General.*

1415. You would not call the autumn manœuvres actual service?—I do not for the purpose of the volunteers.

*Chairman.*

1416. The Regulation of the Forces Act, 1871, Section 9, says, "When any part of the volunteer force is assembled for the purpose of being trained and exercised with the militia or regular forces, the Mutiny Act and Articles of War shall apply to the part of the volunteer force so assembled in the same manner as they apply in pursuance of the Volunteer Act, 1863, to volunteers on actual military service"; therefore, they are exactly in the same situation, if they are at Aldershot, as they would be on actual service?—This clause says: "When any part of the volunteer force is assembled for the purpose of being trained and exercised with the militia or regular forces"; but that does not apply when they are out on a field day. When the volunteers are being trained and exercised they are under the Mutiny Act; but they are not under the Mutiny Act when they go out on field days, and are exercised.

*Chairman—continued.*

It is "trained and exercised;" it is not "trained or exercised." A volunteer officer can put his own men under arrest. There are all manner of clauses relating to when the volunteers are under the Mutiny Act; and the question is whether a volunteer, when he is out on a field day, can be imprisoned for knocking down his officer. I say, that he cannot.

1417. Why is Sub-section 16 confined to officers only?—I have not completed the part with respect to the application of the Mutiny Act to the auxiliary forces; I have only put in those clauses which are already in the Mutiny Act. It remains for the Committee to instruct me what is their opinion with respect to the auxiliary forces, and then I will take care to obey their instructions. Under the Volunteer Act, a volunteer officer can place his man under arrest during the whole time that his corps is out; but he must afterwards dismiss him; and that is what they constantly do.

1418. But where is there anything in this Act which puts volunteer privates under the Act at all?—They are put under it under the Volunteer Act. If you will be kind enough to glance at the heads of the memorandum, you will find that originally the volunteers, and the yeomanry, and the militia, were entirely regulated by separate Acts from the Mutiny Act, and these subordinate Acts declared when they were subject to the Mutiny Act. Of late years the Mutiny Act has sometimes regulated them, and sometimes not regulated them, and has overridden the original Acts. I proposed to the Government to consolidate the whole of the clauses, and to put into the Mutiny Act all the occasions on which the auxiliary forces, as well as the regular forces, are subject to the Mutiny Act. That has not yet been completed.

1419. If they are to be under the Mutiny Act we shall agree that the occasions or circumstances under which they should be so placed under the Mutiny Act ought to appear on the face of the Mutiny Act?—That I have submitted to the War Office, and I have been instructed that it is so to appear.

1420. Has your attention been called to the fact that, as I understood from Mr. Clode, with reference to the militia there is a protection to them, that they shall not be made subject to capital punishment, or punishment affecting life or limb, and that there is no similar protection in the case of volunteers?—No; it is absolute confusion. You will find that the militia are protected entirely, and there is a further doubt whether the volunteers in that sense include the yeomanry.

1421. Will you consider and submit to the Committee a clause relating to the volunteers?—I will do so.

Friday, 12th July 1878.

## MEMBERS PRESENT:

Lord Charles Beresford.  
Mr. Campbell-Bannerman.  
Admiral Egerton.  
Sir Alexander Gordon.  
Sir William Vernon Harcourt.  
Sir Henry Havelock.  
Mr. Hayter.  
Mr. Staveley Hill.  
Mr. John Holms.

Viscount Hinchinbrook.  
The Judge Advocate General.  
Colonel Loyd Lindsay.  
Mr. Merewether.  
Colonel Mure.  
Major O'Beirne.  
Mr. Parnell.  
General Shute.

SIR WILLIAM GEORGE GRANVILLE VERNON HARCOURT, Q.C.,  
IN THE CHAIR.

Sir HENRY THRING, K.C.B., and Mr. JAMES CORNELIUS O'DOWD, re-called; and further Examined.

*Chairman.*

1422. HAVE you prepared any other Paper which you wish to submit to the Committee?—I have entirely re-drawn Part III. (*vide* Appendix, No. 3). of the Army Discipline Bill as submitted to the Committee.

1423. I believe you have prepared a new Clause 84?—I have.

1424. Will you explain to the Committee how it differs from the old clause?—It differs from the old clause very materially; in the old clause I have simply printed as far as I could the exact words of the Mutiny Act; I have now done what I believe the Committee wished me to do; I have attempted completely to consolidate the clauses applicable to military law; I have also deliberately, and with the approval so far of Colonel Stanley, put an interpretation on the clauses which I thought were doubtful; I have arranged these clauses, and it will perhaps be convenient for the Committee to know how I have arranged them. I have arranged the persons subject to military law; first, as to the regular forces; secondly, as to the forces in India; thirdly, as to the colonial and foreign forces; fourthly, as to the reserve forces; fifthly, as to the militia; sixthly, as to the volunteers; seventhly, as to camp followers; and eighthly, and lastly, as to miscellaneous persons. The Committee may see from that arrangement whether or not I have (as I hope I have) exhausted the whole law as respects each class of persons.

1425. The first part of your new clause 84 is as to the regular forces?—The first part of the clause is extremely material. I have put under

*Chairman—continued.*

Sub-head (1), "All persons commissioned as officers in the regular forces, whether on full-pay, half-pay, or retired pay." It is contended that officers on half-pay and retired pay are not under the Mutiny Act; Mr. Clode says that, historically, they are not under the Mutiny Act, and that opinions have been given that they are not so; I have mentioned it to the War Office, and I may say that I myself am strongly of opinion that they are under the Mutiny Act. Section 2 of the Mutiny Act is as follows: "All the provisions of this Act, and any Articles of War made in pursuance of this Act, shall apply to all persons who are or shall be commissioned, or in pay as an officer, whether of the regular forces or the militia." I dismiss the militia from my present consideration. This clause, I submit, extends to two classes of officers. I have asked at the War Office whether or not a half-pay officer holds his commission; and they say that every half-pay officer is a commissioned officer, and holds a commission. I am told that when half-pay officers were called up on full-pay some years ago it was the custom to issue new commissions, but that now they do not issue new commissions. An officer when he is on full-pay is, of course, commissioned; when he goes on half-pay he holds the same commission; if he is recalled on full-pay he still holds the same commission; and it beats my intelligence to understand how those gentlemen are not commissioned officers.

1426. What is the document by which an officer is re-called on to full-pay?—An official notice in the "Gazette."

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and Mr.  
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Mr. JAMES CORNELIUS O'DOWD recalled; and further Examined.

Mr. O'Dowd.

Mr. Campbell-Bannerman.

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1427. I PRESUME that the reason for the new Commission being issued was this: that formerly an officer was commissioned to serve in a particular regiment, and when he went on half-pay he ceased to belong to that regiment, and when he was recalled he had, of course, to be commissioned to a fresh regiment; but now his commission is not to an individual regiment, but to serve in Her Majesty's Forces, or some general

Mr. Campbell-Bannerman—continued.

expression?—He is an officer "in the Land Forces." The liability of half-pay officers to the Mutiny Act is referred to in "Simmons' Courts Martial." It was decided in 1715 that they were not subject to the Mutiny Act, and that decision is now the governing decision. (Sir Henry Thring.) I submit that they are under the Act, and I also submit that they ought to be, whether they are or not.

Sir HENRY THRING, K.C.B., recalled; and further Examined.

Sir  
H. Thring,  
K.C.B.

Chairman.

Chairman—continued.

1428. IN "Simmons on Courts Martial" (p. 27) there is this passage: "Officers on half-pay were expressly mentioned in a declaratory clause in the Mutiny Act of 1748, but afterwards this specification was omitted; and until the substitution of 'commissioned' for 'mustered' in the general description in the Mutiny Act of 1786, neither brevet officers nor officers on half-pay were within the terms of the Act. The description, as then amended, and as it now stands, unquestionably includes all officers holding brevet commissions. Mr. Tytler, in the first edition of his Essay, laid it down that it also included half-pay officers; this he altered in his revised edition, and meanwhile prefixed a 'material correction' to the former, in which he states that he had been certified 'that in framing the clause of the Mutiny Act as it now stands, by which all officers, commissioned or in pay, are declared liable to its authority, it was not the intention of the Legislature to include officers on half-pay in that description; but that officers holding brevet commissions, without pay, were understood to be included.' However this may be, it is certain that under the law, as it then stood, officers on half-pay, though not holding brevet rank, or employed on the staff, have been held liable to military arrest, otherwise than with respect to their conduct on full-pay, and consequently amenable, it might be inferred, to military law. This appears by the orders (G. O. 452) which promulgated the court martial on Lieutenant John Mahon, of the 9th Foot, who was found guilty of striking Lieutenant Geagan, half-pay, 8th West India Regiment, in the messroom of the detachment 9th Foot in the barracks at Morne Bruce, Dominica, on the night of the 3rd July 1819, and sentenced to be discharged from His Majesty's service. He was recommended by the Court, and experienced the Royal clemency. The Prince Regent was at the same time pleased to command that Lieutenant Geagan should be severely reprimanded for the whole of his conduct in the different stages of this transaction, and 'that his deep displeasure should be expressed at the conduct of Captain Ogle, who was president of the mess at Morne Bruce when this affair happened, as having been grossly negligent of his duty, in not interposing his authority on that occasion, by putting the parties under immediate arrest; thereby effectually preventing the fatal consequences which might have ensued to Lieutenant Mahon and Lieutenant Geagan from their being

left at large.' The substitution of 'commissioned' for 'mustered' in 1786 gave rise to much discussion in both Houses of Parliament; and the debates may tend to show the intention with which the alteration was introduced, but they cannot decide the point of law. It does not appear that any opinion of high legal authority has subsequently been given on the question. Whatever may be the true construction of the Mutiny Act, it would seem, so long as the incidental mention of officers on half-pay stands a part of the Articles of War, as at present worded, that the Articles at all events must be taken to express the intention of the Sovereign to confine the penalties of military law to offences committed during actual military service." Then the 109th Article of War is quoted, and it is said that the Article was first introduced in 1829, and specifies the officers who may compose a district court martial; and that the proviso referred to has been continued without alteration, "provided such officers" (*i.e.*, of the general staff) "are in the receipt of full-pay on the staff, and are themselves amenable to military law, although on the half-pay of their regimental rank." That seems to imply the assumption that if they were not on full-pay they would not be amenable to military law?—I am quite aware of that; but the Article of War could not alter the Mutiny Act.

1429. Then Simmons goes on to say: "Some members who took part in the debate, expressed an opinion that hardship and injustice to officers on half-pay would arise by subjecting them to military law; but when it is considered that an officer on half-pay may be summarily removed from the Army List, on the order of the Sovereign, it will be admitted that their amenability to trial must be held as an advantage, and their actual trial a boon, rather than a hardship. The Lord Chancellor Thurlow aptly remarked during the course of this debate, 'If gentlemen chose to have the advantage of military rank, they ought to hold it on the condition of being subject to military law; and if they disliked that condition, they might ease themselves of the grievance by resigning their commissions.' The respectability of the army would certainly be promoted by the trial and consequent dismissal of every officer who conducted himself in a manner derogatory to his profession; and, on an officer's resumption of active duties, whether by a new commission or by a staff appointment, the commission which he retains on half-pay is that alone by

*Chairman*—continued.

by which his rank in the army is ascertained, there can be no injustice, but a positive necessity, one would imagine, for rendering an officer accountable to the service for his conduct on half-pay. The exertion of the royal prerogative to dispense with the further service of an officer on half-pay is seldom resorted to but in very aggravated cases; nor can it be wished that recourse should be had to it more frequently since its application must always be attended by difficulty; the delinquency of the officer being judged upon reports, and not by judicial inquiry." The impression up to this time seems to have been that the word "commission" did not cover the case of half-pay officers?—"Commissioned or in pay," I submit, must cover them. As a matter of expediency I wish to point out that militia officers are always under the Mutiny Act and half pay officers are not, which is a *reductio ad absurdum*, in my judgment.

1430. The statement by Mr. Clode in his book is this: "An officer unemployed and on half-pay cannot be tried by court-martial except for offences committed when in full pay;" and for that he cites as authority the opinion of the law officers given on the 22nd November 1796?—I am quite aware of that; but how can human intelligence get out of these words: "Every commissioned officer?"

Mr. CHARLES M. CLODE, re-called: and further Examined.

*Chairman*.

1434. WILL you explain to the Committee what you consider to be the situation of half-pay officers with reference to their liability under the Mutiny Act?—Practically, I think that there is none; the history of the discipline of the half-pay officers, I think, is this: in 1715, after the rebellion of that period, some of them were tried as deserters, because when called upon to serve they refused to obey the summons; I think two of them were executed at Preston; a third having resigned his commission before he received the call was held not to be liable to the Mutiny Act. Then Parliament dealt with it, and the next date that I need mention is 1786. It then came before the Privy Council in General Ross's case, and it was held by the judges that he, as a retired or half-pay officer, was not liable to the Mutiny Act.

1435. In 1748 it appears that there was an express clause put in, making them liable?—There was, but that was withdrawn the next year, I think you will find.

1436. Do you know why it was withdrawn?—Because it was very strongly objected to politically.

1437. It was withdrawn in order that they might not be liable?—Certainly; then it came before the Cabinet of 1786, and I have printed a letter, which you will find in Vol. I. of "The Military Forces," at page 180, in which Mr. Pitt says that he has submitted the question to the Cabinet, and that the Cabinet think it not expedient to make half-pay officers liable to the Mutiny Act.

1438. In the Act of 1785 the persons liable were those "mustered or in pay as an officer;" and in the Act of 1786 the words were "Any

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*Chairman*—continued.

1431. But what I want to get at is, whether apart from the question of the interpretation of the Statute we are called upon to decide a new principle, or whether we are confirming only an old one?—I think that practically you will be subjecting half-pay officers to the Mutiny Act for the first time since that ancient date, when they were subjected to it by these express words.

Colonel Loyd Lindsay.

1432. In the case of Hobart Pasha, who although not in the army was in the navy, and who took service in a foreign country, it was always understood that he being on half-pay was not amenable to be ordered to return from that service?—It is a most startling doctrine if that be so; the Queen might have put him upon full-pay instantly.

*Chairman*.

1433. What is the character of offence for which a half-pay officer would be tried?—Under Article 79, for scandalous conduct, unbecoming the character of an officer and a gentleman, the Committee are aware that last year the militia officers were put under the Mutiny Act.

*Chairman*—continued.

person who is or shall be commissioned or in pay as an officer;" those are the present words, are they not?—Yes; the question came before the Court of King's Bench in the case of *Bradley v. Arthur* (4 Barnewall and Cresswell) in which it was accepted by the Court that half-pay officers were not, as half-pay officers, liable to the Mutiny Act, but that whenever they had any military employment, supposing, for instance, that they were staff officers of pensioners, then they would be amenable to the Mutiny Act.

1439. You say that there has been a legal decision that these words, as they stand at present, "who shall be commissioned or in pay," did not cover half-pay officers?—Quite so, because a half-pay officer was in this position before Lord Cardwell's Order in Council came into operation, which dispenses with the necessity of a separate commission on each particular employment; no man was ever brought on full pay without being re-commissioned; so that his old commission was held to be in abeyance, and he was not held to be a commissioned officer in the sense in which an officer on full pay was commissioned.

1440. Then, in fact, he was not a commissioned officer?—He was held not to be a commissioned officer, because his commission was really in abeyance; he was not exercising any function with regard to the appointment which the Crown has given him.

Mr. Campbell-Bannerman.

1441. But now that he is commissioned, do you think generally that he might come under this clause?—He might possibly come under the words of it; as the law now stands, because

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under Sir George Lewis's Act which enables the Secretary of State and the Commander in Chief to issue commissions, an Order in Council was made in 1871, enabling the Crown to grant an original commission, and then to appoint the officer to any particular place by directions, "in the Gazette," so that his subsequent rank is regulated, not by his commission, but by his appointment in the "Gazette."

1442. And that commission is valid, even if he is on half-pay?—Certainly; but still it is in abeyance.

Chairman.

1443. As far as I can see, it must be taken that upon the only occasions upon which this matter has ever been brought before Parliament they have refused to put half-pay officers under the Mutiny Act; I see that in 1747 such officers were expressly put under the Mutiny Act, and were made liable at all times to penalties and punishments; then in 1749 a debate arose, and opinions were so strongly expressed that the clause was withdrawn; and the effort to reinsert it in the following year failed to succeed; then it was brought again before the Government in 1786, in consequence of the decision of the judges, and Mr. Pitt declines to introduce clauses to make half-pay officers amenable to military law?—Then you will find that there was a debate in your own House in 1870, in which that decision in General Ross's case, and the action of Parliament in 1749 came under review. That was a naval case, Captain Gurdon's. It was brought on by, Sir John Hay. The general question arose whether half-pay officers were or could, in reference to the constitutional rule, be made liable to the Mutiny Act, and the First Lord of the Admiralty disclaimed it in very emphatic terms. That is, I think, the last record we have of the question in Parliament.

Mr. Staveley Hill.

1444. It is expressly provided by the 87th section of the Naval Discipline Act, that "Every person in or belonging to Her Majesty's navy, and borne on the books of any one of Her Majesty's ships in commission, shall be subject to this Act;" so that no person can be subject to the Naval Discipline Act in the navy, unless he is borne on the books of one of Her Majesty's ships in commission?—Quite so; commission to a regiment is something like the analogy of a commission to a ship.

Colonel Mure.

1445. You said that after the rebellion of 1715, the half-pay officers were called upon to serve, and those who refused to serve were tried as deserters; at the present moment in what position is a half-pay officer in regard to liability to serve?—He is struck off the Army List if he fails to appear, but he is liable to be called upon. Half-pay was held to be a retainer for future service.

Chairman.

1446. Your opinion is that he could not be tried as a deserter now?—Certainly not.

Colonel Mure.

1447. Would the only punishment be that he

Colonel Mure—continued.

would be struck off the Army List?—Yes. The discipline of a half-pay officer was formerly held to be in the hands of the Secretary at War, inasmuch as he was responsible to Parliament for the half-pay list; and in the second volume of the same book, to which reference has been made, you will find a submission paper that was sent by the late Lord Hardinge to the Queen, striking off from the half-pay list an officer who had behaved discreditably.

Chairman.

1448. The honourable and gallant Member for Brighton has suggested that the course might be taken of giving a half-pay officer the option of being put upon full-pay, so as to enable him to be tried by court martial; do you know whether such a course has ever been taken?—I am not sure that Lord George Sackville was not brought on to full-pay, when he was tried after the battle of Minden; but that is the only case.

Mr. Hayter.

1449. He was tried for his conduct when in command of the cavalry, was he not?—Yes; but he had been dismissed from the army before he was tried. Then the question arose, whether he could be tried under such circumstances, and I think it was held that he could be tried, but by his own consent.

Mr. Campbell-Bannerman.

1450. But that was not the case of an officer on half-pay?—Certainly not.

Chairman.

1451. Was Lord George Sackville tried by court martial?—Yes.

Mr. Hayter.

1452. I think he applied for it, did he not?—He did.

General Shute.

1453. Was he put on full-pay?—My impression is that he was. I am inclined to think that other officers have been brought on full-pay for the purpose of being tried.

Admiral Egerton.

1454. Do you think it is necessary to bring an officer on full-pay to try him?—I think, as the law now stands, it is.

Mr. Merewether.

1455. What do you say then to the words of the Mutiny Act, "Any person commissioned as an officer"?—It has been held that a half-pay officer was not commissioned as an officer.

Chairman.

1456. This is what is said in "Simmons on Courts Martial" about the case of Lord George Sackville: "It appears from the case referred to the Attorney and Solicitor General that, on his return from Germany, Lord George, in a letter dated the 7th September 1759, 'humbly requested his Majesty to give him an opportunity of justifying himself before a court martial to be appointed for the purpose of giving judgment on his conduct; but the King (George II.), on the 10th September, was pleased to dis-

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*Chairman*—continued.

miss Lord George Sackville from his service as lieutenant general and colonel of dragoon guards. His lordship having no other place or office in the army besides those above mentioned, and being totally removed from all military employment, repeated his request for a court martial; to which his Majesty was pleased to consent if it might be according to law. Upon the question whether an officer is triable by a court martial for a military offence, after having been dismissed from all his Majesty's employments, the above-mentioned law officers, to whom the case was referred, stated that they were of opinion that an officer guilty of offence against martial law, while he is in actual service and pay, may be tried by court martial, after having been dismissed from all his military employments. Upon this Lord George Sackville was brought to trial before a general court martial." But that does not touch this point. The offence was committed whilst he was on full-pay, and it is said in one of these books that a half-pay officer may be tried for an offence committed on full-pay?—That would be, I presume, on the authority of that case. I think you will find in the case of *Bradley v. Arthur*, that Lord Brougham argued it under the accepted condition that a half-pay officer was not liable to the Mutiny Act.

*Mr. Campbell-Bannerman.*

1457. Do you recognise different classes of half-pay officers, some who have absolutely retired, and in whose case half-pay is in the nature of a pension, and others who are merely temporarily on half-pay?—No, I am afraid they have been dealt with as being all in the same category. If the Committee thought of dealing with the subject, I think it would be expedient to look at the late Retirement Warrant, because some are receiving pensions which are *quasi* half-pay, and they would never be called upon, except in case of emergency.

*Chairman.*

1458. For instance, in the Navy would you put retired officers under the Mutiny Act?—I am not prepared to say.

Sir HENRY THRING, K.C.B., re-called; and further Examined.

*Chairman.*

1466. Is the introduction of half-pay officers in this draft clause one which you have placed there by the distinct instructions of the military authorities, or is it merely a suggestion of your own?—The instructions which I received yesterday were these: I drew the attention of Colonel Stanley to the fact that I believed that half-pay officers were legally under the existing law; he told me to submit the question in that form to the Committee, but that if I was asked whether he had decisively made up his mind upon the point, I was to say that he had not; though he agreed with me as to the legal question.

*Sir Alexander Gordon.*

1467. Are you aware that the law officers of the Crown have given a contrary opinion for the last 100 years?—I am told so.

0.111.

*Colonel Loyd Lindsay.*

1459. Would you not draw a distinction between officers liable to service and officers not liable to service?—I think you must do so.

1460. For instance, there would be a distinction between general officers who are still receiving pay and who are no longer liable to service, and half-pay officers?—No doubt.

*Colonel Mure.*

1461. The distinction has been between retired pay and half-pay, I suppose?—Hitherto not.

*Mr. Campbell Bannerman.*

1462. Is every half-pay officer liable to recall?—In extreme emergency. If a man goes on half-pay before he has completed 25 years' service he is at any time liable to be called upon to return. After 25 years' service it has been said that the Crown could only call upon a half-pay officer to serve as it could call upon anybody else in case of invasion or anything of that kind; but it is assumed that there is a greater obligation upon anyone receiving half-pay or pension than upon an ordinary citizen to serve the Crown.

*Colonel Mure.*

1463. There are a great many cases of officers who are put upon half-pay for a short period; are those officers on exactly the same footing during the time that they are on that temporary half-pay as officers who have retired on half-pay because they did not wish to leave the service?—Quite the same. If the Committee thought of making a half-pay officer liable to the Mutiny Act, I think it would be expedient to distinguish between the claims, or rather the rights, that officers have to half-pay with or without service except under emergency.

*Admiral Egerton.*

1464. Has it not been recently decided that there is a claim upon a retired officer if he is called upon to serve?—The Crown has always held that there is, but I am not sure that the officers have always accepted it.

1465. As regards the Navy, there was a question in the House upon that point, was there not?—There was.

*Chairman.*

1468. Have you any remark to make with regard to Sub-section 2 of your new clause?—Sub-section 2 is different in words; but it represents, I believe, accurately the existing law. The words in the Mutiny Act are: "who are or shall be listed or in pay as a non-commissioned officer or soldier; and to all warrant officers." The words of the new clause are: "All warrant officers, and all persons attested or in pay as non-commissioned officers or soldiers in the regular forces." "Attested" is substituted for "listed," because Section 47 of the Mutiny Act says: "No recruit unless he shall have been attested, or shall have received pay other than enlistment money, shall be liable to be tried by court martial." Therefore, in effect, Section 47 substitutes "attested" for "listed," which is in favour of the soldier.

Q 2

1469. Have

*Mr. Clode.*

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*Chairman—continued.*

1469. Have you made any alteration as to the forces in India?—I have not; I do not pretend to know the particulars of the forces in India, and these clauses, I am told, are under the consideration of the India Office; I have simply put them in paragraphs.

1470. You have taken the existing Act literally as regards those forces?—Yes.

1471. Have you made any alteration as regards the colonial and foreign forces?—I have altered that on the ground that I really could not understand the existing law. It is Section 4 of the Mutiny Act, and the 190th Article of War, Section 4, of the Mutiny Act says: "All officers and soldiers of any troops mustered and in pay which shall be raised and serving in any of Her Majesty's dominions abroad, or in places in possession of or occupied by Her Majesty's subjects, under the command of any officer having any commission immediately from Her Majesty," and so on. I have put it in this way, "All such officers and soldiers mustered and in pay, as have by order of Her Majesty been raised beyond the limits of the United Kingdom, and beyond the limits of Her Majesty's dominions in India, and are serving under the command of a commissioned officer of Her Majesty." The soldiers raised in the United Kingdom are provided for, the Indian soldiers are provided for, and I presume that this clause is intended to cover officers raised by command of Her Majesty elsewhere.

1472. There are troops in Canada, and there are or may be troops in Australia; do the officers in all the colonial forces hold commissions from Her Majesty?—No, from the governor of the colony, I think.

1473. We have always been very careful with reference to the rights of the colonies in extradition and other Acts, to introduce a saving clause, "Unless the colony has itself made provision in such case;" and I should think it would be safer in this instance to do that in the case of the self-governing colonies?—Quite so. I will attend to that.

1474. Have you made any alteration with regard to the reserve forces?—That is taken verbatim from the Mutiny Act; it appears to cover everything; "all men enrolled in the army reserve force, or enlisted in the militia reserve force, when called out for training or exercise, and when kept on duty, having volunteered their services, and when called out for duty in aid of the civil power, and when called out on permanent service under Her Majesty's proclamation." That I believe exhausts their liability to the Mutiny Act.

1475. That is the existing law as it stands?—It is.

1476. How is it with regard to the militia?—As to the militia, that again is the existing law, taken out of the Mutiny Act, but it has been more difficult, because the expressions are different. I have not intended to alter the law; I have only intended, as far as I could, to consolidate it. With respect to sub-section 9, "All persons receiving pay as members of the permanent staff of the militia," that is taken from Section 2 of the Mutiny Act. With respect to "all persons commissioned or in pay as officers of the militia," that also is the existing law; I put in the exact words, because it was not important

*Chairman—continued.*

to alter it. There are no half-pay officers in the militia.

*Mr. Parnell.*

1477. Would you not say "all persons commissioned and in pay"?—I understand that the Committee have declined to express an opinion upon the construction of those words, and therefore I cannot alter it, unless I am ordered to do so.

*Mr. Campbell-Bannerman.*

1478. With regard to Sub-section 8, as to the reserve men, have you incorporated the 107th section of the Mutiny Act?—No, I have not incorporated the 107th section for this reason: I am told that at the present moment it is totally unworkable, and must be reconsidered. The 107th section says, that the reserve men are to be tried for a wilful neglect, or disobedience of orders or regulations. I pointed out to the War Office that it was impossible to work it; they said, "We have never attempted to work it yet, and we have made no regulations." Therefore I have allowed that to stand over, because it is impossible for the Committee to judge of it, and it is quite impossible for me to alter it.

1479. It has reference generally to the conduct of a reserve man when he is not actually called out?—Certainly. What it really meant is this: that if he disobeys certain regulations with regard to his clothing and other things, he may be punished; but, inasmuch as those regulations have never been made, and inasmuch as the clause does not specifically point to any particular regulation, but covers the whole, though some of the regulations cannot be the subject matter of martial law, the clause is absurd. I thought it better to leave it out until I had definite instructions from the War Office. Colonel Greaves told me that they had never acted upon it.

*Chairman.*

1480. Is there any change of the existing law in Sub-section 11?—I consider it to be a consolidation.

1481. In the case of the volunteers there is something that is new, is there not?—That will arise upon the question of how much punishment shall be applied to them. A very important question arises upon Clause 84A, because by that clause I have put the volunteers and all other persons not belonging to the regular forces altogether under military law, when they are under military law at all; that is to say, they will be subject to exactly the same punishments as if they were regular soldiers. This is only as to the times at which they are subject to military law; and as respects the times I think I have made no alteration.

1482. Does this clause determine the question of whether volunteers are or are not to be considered to be persons subject to military law?—It does in one sense. This clause, so far as it stands here, represents the existing law; but I have put in very important provisos indeed which will arise on the consideration of Clause 84A, and which I will mention to the Committee.

1483. Are the Committee to understand that Sub-sections

*Chairman*—continued.

Sub-sections 12 and 13 relating to the volunteers represent only the existing law?—That is so.

1484. The provision as to camp followers does represent an alteration in the law, does it not?—That represents an alteration which was made in accordance with the resolution of the Committee.

1485. You mean the resolution that the rule which, at present, under the Mutiny Act, applies only to the Indian forces should apply to the forces generally?—Yes.

1486. With respect to the “miscellaneous persons,” is that sub-section a variation of the existing law?—There was a Committee appointed at the War Office who went through the whole of these clauses, and I was instructed that these ought to stand. You will find that a few are omitted. “All persons in the recruiting service receiving pay, and all pensioners receiving allowances in respect of such service” (there is some doubt, I understand, as to whether they belong to the regular service or not), “and all persons who are or may be hired to be employed in the Royal Artillery or Royal Engineers.”

1487. Is that in the present Mutiny Act?—Yes, it is exactly the same. “All persons who are or shall be serving or hired to be employed in the artillery or any of the trains of artillery, or as masters gunners or gunners.” The master gunners come in the next clause.

1488. That would apply, I suppose, to farmers’ teams employed at the military manœuvres; supposing that the artillery were to hire teams to drag the guns, either in case of an invasion or even in time of peace, the men whom they hired to attend to the team would be subject to military law, would they not?—Yes, that would be so.

*Mr. Campbell-Bannerman.*

1489. They would be under the 15th sub-section, “followers of or accompanying Her Majesty’s regular forces”?—Yes. Then come “All master gunners and conductors of stores;” I believe that there are certain officers somewhere who are called master gunners. (*Mr. Clode.*) They were civil officers appointed by the Ordnance Department to whom, formerly, all the stores were entrusted.

*The Judge Advocate General.*

1490. Do they exist now?—Yes.

*Mr. John Holms.*

1491. Might the sub-section apply to those men hired by the Royal Artillery in the Woolwich Yard?—I do not know the details, but I take it that in the Arsenals they are not employed in the Royal Artillery or Royal Engineers.

*Chairman.*

1492. Do you know what a “conductor of stores” is; does it mean that Pickford carrying military stores would be subject to military law?—No; I do not know that any great evil would occur if it were struck out.

1493. At all events you have put nothing in your new clause which is not in the present Mutiny Act?—Nothing; I have only put in “not otherwise subject to military law,” because Q 111.

*Chairman*—continued.

of course some of those officers must necessarily be so subject now.

1494. Now we come to the important Clause 84A, which is new, is it not?—That is new, and of course it raises most important questions. The Regulation of the Forces Act, 1871, s. 9, says: “When any part of the volunteer force is assembled for the purpose of being trained and exercised with the militia or regular forces, the Mutiny Act and Articles of War shall apply to the part of the volunteer force so assembled in the same manner as they apply in pursuance of the Volunteer Act 1863, to volunteers on actual military service.” I need not tell the Committee that when the volunteers are on actual service, that is to say, when they are called out in case of an invasion, they are subject to the Mutiny Act in exactly the same way as regular soldiers. When they are not called out on actual military service, I believe they can only be punished by being kept in arrest during such time as they are serving; for instance, if they are serving for three or four days they may be kept in arrest for those three or four days; and if they are only serving for an afternoon they may be kept in arrest for that afternoon, and then they must be discharged; otherwise I believe they are not subject to any military punishment. Volunteers can only be tried by their own officers, as the law at present stands, except under the clause which I have read. It has been strongly represented by the military authorities, that if the volunteers are to be of any use and are to be brigaded with the regular troops, they must be treated in the same way as the regular troops; because, as Colonel Greaves very properly put it, “I cannot have a volunteer regiment brigaded with my regiment, and if one of those men knocks down one of my officers he is not to be punished.” Therefore the clause that I have been directed to submit to the Committee is that, when the volunteers are under the Mutiny Act they are to be under the Mutiny Act to all intents and purposes; that their officers may sit on courts martial upon the regular forces, and that the officers of the regular forces may sit on courts martial upon the volunteers, and they are to be to all intents and purposes part of the regular army. That will be the effect of the clause.

1495. This we may take from you as the deliberate judgment and recommendation of the military authorities?—That, I believe, is so.

1496. The result of that would be that if a volunteer officer, or soldier, going out on a field day, was guilty of some offence triable by military law, he would then be tried for that offence, exactly as if he were a regular officer or soldier, and would be subject to a similar punishment?—Certainly; that is the effect of the clause.

1497. Is this confined to cases when the volunteers are brigaded with other troops?—As it stands it would be.

1498. Under the Regulation of the Forces Act are volunteers, when they are being trained and exercised with any portion of the militia or regular forces, subject to the Mutiny Act?—Yes, they are subject to the Mutiny Act, *pur et simple*, under the Regulation of the Forces Act, 1871.

1499. Then what more do you want to do by your Clause 84A?—The view of the War Office is that when volunteers are brigaded or acting

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acting as part of the regular forces, they must be subject to the same punishment as the regular forces.

1500. The existing law is that if a volunteer goes out to be trained and exercised with any portion of the militia or regular forces, he is to be subject to the Mutiny Act; in Clause 84, you have stated that these men shall be subject to military law, that is to say, I suppose to the whole Statute; is not that sufficient?—Clause 84A is only put in to entirely clear away all doubts, and to make it quite clear, and also to raise the point distinctly before the Committee, whether, when volunteers are under the Mutiny Act, they are subject to it for all purposes. If the Committee assent to the principle, I shall be only too happy to have their opinion as to whether these clauses are technically necessary.

1501. It seems to me that the Regulation of the Forces Act, 1871, with the exception of the ambiguity of the words "trained and exercised" does the whole thing. I understand that Act to say this: that when the volunteer forces are trained with the militia or regular forces they are to be subject to the Mutiny Act?—Then *cadit questio*. I think you ought to have the words "acting with." The reason why I put in the words "attached to," is because they take an express power in the Act to "attach" them, whatever that means; but, of course, the one set of words will cover the other.

1502. As I understand, subject to this ambiguity of phrase, we are not asked to recommend anything new. At present, the Regulation of the Forces Act says, that when volunteers are exercised or trained with the regular forces, then they shall be subject to the Mutiny Act altogether in its entirety?—It only raises the point of a field day; that is really the whole point.

1503. The Regulation of the Forces Act does not say that when volunteers are out with the regular forces they shall be subject to the Mutiny Act altogether, but only that they shall be subject to it "in pursuance of the Volunteer Act, 1863;" and that carries us back again to what the Volunteer Act of 1863 makes them liable to?—That makes them entirely liable.

1504. Then, it is merely a question of enlarging the words "trained and exercised"?—That is the principal question with regard to the volunteers.

1505. Under your Bill, when they are being trained and exercised with the regular forces, you put them under the Mutiny Act?—Yes.

Mr. Hayter.

1506. In Sub-section (c), the words "when on actual military service" would consider a volunteer corps going out by itself, would it not?—No; I shall have to alter it, because we have used the phrase "actual service," in a different way. That is the phrase which is used in the Volunteer Act, which subjects volunteers to the Mutiny Act. It means, when called out permanently in case of an invasion.

Chairman.

1507. Subject to that alteration of phraseology, you do not ask us to alter the law as regards the volunteers?—Except in so far you may add to

Chairman—continued.

it by including a field day, and making the law clear, which is doubtful now.

Mr. Campbell-Bannerman.

1508. Then what is Clause 84 A?—I put in this claim as a declaratory clause to over-rule all clauses in other Acts, giving the volunteers special exemptions.

1509. If the volunteers are out with the other forces, they are subject to the Mutiny Act in the sense that they are subject to discipline; but can a volunteer officer sit on a court martial on an officer or soldier of the regular forces?—Not at present; but the War Office wish that, if we make it perfectly clear that the volunteers are under the Mutiny Act, there should be no distinction at all drawn. They say, "Make a clean sweep; make the volunteers part of the army when they are part of the army."

1510. And this Clause 84A would have that effect?—Yes. It is in order to make it quite clear that when volunteers are acting with the army, they are to be part of the army.

1511. Does it not strike you that a volunteer regiment is frequently local, and that one particular company from a regiment may go to Aldershot or may be called out; and in that case, why should the Mutiny Act apply to the whole of the rest of the regiment, which is at home ploughing and sowing?—I do not think it would; but I will make that point clear.

Colonel Mure.

1512. If the volunteers and the regular forces are placed on exactly the same footing, and happen to be in garrison, you would have volunteer officers sitting upon a district court martial, would you not?—Yes, no doubt.

General Shute.

1513. If this clause was approved, could a volunteer field officer be president of a district court martial upon men of the regular army?—Certainly. I understand that the War Office are very anxious that volunteer officers should endeavour to make themselves fit to sit upon courts martial; and that it should be quite understood that the fact of being a volunteer officer, was not a technical disqualification for sitting on courts martial; but that practically the War Office did not intend to put on courts martial, officers who were not properly qualified.

Chairman.

1514. It would be in the hands of the convening officer, would it not, to constitute the court martial?—I understood so. There is a roster or list of officers, and they put upon that list the persons whom they think ought to be on the court.

Mr. Parnell.

1515. Does the law at present give power to volunteer officers to sit on courts martial when on actual service?—When called out on actual service they certainly would be able to sit on courts martial.

1516. But not when they are attached to or otherwise acting as part of the regular forces?—No.

1517. Or under the conditions described in Sub-section (A.)?—No.

1518. At

*Chairman.*

1518. At present, can a volunteer regiment itself hold a court martial upon its own men?—I believe not; they could, on actual service, of course.

1519. Under the Volunteer Act, is there no power to hold a court martial except on actual military service?—I think not, but I am not perfectly certain.

1520. Do you mean that under the Volunteer Act there is no disciplinary authority at all given to the officers?—They can only dismiss and fine in certain cases, when they are not on actual service.

1521. Under the Regulation of the Forces Act, 1871, how would such a court martial, at present, be held?—Supposing that they are under the conditions of the Regulation of the Forces Act, 1871, I have no doubt that they can then hold regimental courts martial or district courts martial if there are enough of them, precisely in the same manner as they could in time of war.

1522. As the law at present stands, if volunteers are brigaded with regular forces, they can hold a court martial constituted exclusively of their own officers?—So I understand.

1523. Under the Regulation of the Forces Act, 1871, when any part of the volunteer force is assembled for the purpose of being trained with the militia or regular forces, the Mutiny Act and the Articles of War apply to that part of the volunteer force so assembled in the same manner as they apply in pursuance of the Volunteer Act, 1863, to volunteers on actual military service; how would a court martial be held in respect of a volunteer regiment brigaded with the regular forces?—Exactly in the same way as if they were a regular regiment. Section 23 of the Volunteer Act, 1863, says: "With respect to the discipline of officers of the volunteer force and volunteers and non-commissioned officers of the volunteer permanent staff, the following provision shall take effect, and be in force when they are on actual military service, namely, all the provisions of the Mutiny Act (as far as they relate to Great Britain) shall extend to and apply to, and in the case of all officers of the volunteer force and volunteers and non-commissioned officers of the volunteer permanent staff, and those officers, volunteers, and non-commissioned officers shall be subject to the Mutiny Act, and shall also be entitled to the benefits thereof, in all respects as the officers and soldiers of Her Majesty's Army for the time being are, and as if the volunteer force including the volunteer permanent staff, belonged to and formed part of Her Majesty's Army, subject only to this variation, that a court martial for the trial of an officer of the volunteer force or volunteer or non-commissioned officer of the volunteer permanent staff shall be composed of officers of the volunteer force only." We may strike out the "Permanent staff," because that is struck out by the Mutiny Act. Therefore, at the present moment, when volunteers are on actual military service, and therefore also, when they are brigaded, they would most decidedly come under the Mutiny Act.

1524. And therefore all the regulations in the Mutiny Act as to courts martials would apply to them?—No doubt.

1525. I see that a regimental court martial  
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*Chairman—continued.*

may be held, but how are you to constitute a district court martial or a general court martial for the volunteer forces under this Act?—Practically, unless you had two or three regiments of the volunteer force, you could not constitute a general court martial, but supposing that you had that number you might.

1526. You imagine that you would apply the Mutiny Act to the volunteers by a sort of *cy-près* doctrine, as if they were regulars, and constitute a district court martial or a general court martial out of several regiments of the volunteers?—Certainly; I should construe the Acts in the way that I have suggested.

*Colonel Mure.*

1527. Would that include their being able to summon officers to sit upon a court martial from corps which were not called out?—I cannot answer, off-hand, such a difficult question as that.

*Chairman.*

1528. Then the present state of the law is this: that when volunteers are brigaded with regiments of the regular forces, they are to be subject to these enactments as to courts martial; but it is expressly provided that such courts shall be constituted of volunteer officers only?—That is my apprehension of the meaning of that clause, but it gives rise to innumerable difficulties.

*Mr. Campbell-Bannerman.*

1529. That clause is governed by the expression "on actual military service," is it not?—It is.

*Chairman.*

1530. You will agree with me that at present the thing is too indefinite and unworkable?—Quite so; and that is why I put in Clause 84A.

*Mr. Parnell.*

1531. You want to get rid of the exception contained in the Act of 1863, limiting the composition of courts martial for the trial of volunteer officers and privates, to officers in the volunteers?—Yes, I have struck out that exception.

*Colonel Mure.*

1532. In fact, the Clause 84 (A) places the volunteer officers exactly in the same position as officers of the army?—Yes.

*Mr. Merewether.*

1533. If the offence is to be tried by a regimental court martial, supposing that the Melton Mowbray Company of the Leicestershire regiment has gone to Aldershot, and that a Melton Mowbray man commits an offence there; is he to be brought back to be tried by the volunteer regiment to which he belongs, which is not at Aldershot?—No, but he could be tried under the existing law by the officers who were at Aldershot.

1534. Then what is the use of making it regimental?—It may be that I have done that wrongly. That is a technical objection to the wording which I will take a note of. I do not intend to produce any difficulty such as you suggest.

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1535. It

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Mr. Merewether—continued.

1535. It would be highly inconvenient, would it not?—Certainly; that is a mistake in the drawing.

Mr. Parnell.

1536. What change do you propose to make in the law with regard to the liability of officers and soldiers in the militia to the Mutiny Act?—I make rather more change there, because the militia, if I recollect rightly, at the present moment are liable to be tried only by their own officers, in the same manner as the volunteers. That will be abolished, assuming that the Committee approve of these clauses. At the present moment the militia, I believe, except when called upon in case of invasion, are technically not subject to penal servitude or capital punishment. Technically, however unlikely it may be, undoubtedly this clause would make them subject to both; but practically, the difference I suspect is not very great.

Mr. Hayter.

1537. I suppose you propose to retain the proviso in Clause 84A?—Yes, that is the intention. It is not proposed to alter the conditions of the service; but the theory of the army is now that they are all the Queen's Army, the only difference being that the volunteers are very rarely called upon to serve, that the militia men are more often called upon to serve, that the reserve men are frequently under the obligation of service, and that the regular forces are always under that obligation.

Mr. Campbell-Bannerman.

1538. The proviso at the end appears to be a saving clause which annuls and cancels all the rest?—I do not think it is very neatly worded; but it means that you cannot send volunteers abroad, and you cannot make them serve beyond the day, and that you cannot make them come up when they do not choose.

1539. Then the force of it consists in the word "serve"—Yes; it is not very well worded.

1540. To the natural man it simply looks as if you had exempted the volunteers from everything that you had just enacted?—I will take care to bring it down to the level of ordinary human intelligence, if I can.

The Judge Advocate General.

1541. Is Clause 85 any variation of the existing law?—Clause 85 contains the power of the Secretary of State to attach the militia to the regular forces; but I do not think it is much exercised.

1542. What have you to say with regard to Clause 86?—Clause 86 is the same as the existing law.

Mr. Parnell.

1543. I observe that that gives power to attach volunteers to any regiment of the army in the United Kingdom; does that power exist at present?—It was not my intention to alter the present law; there is nothing new in Clause 86.

The Judge Advocate General.

1544. It is the same as Section 105 of the Mutiny Act, is it not?—Yes; I have struck out,

The Judge Advocate General—continued.

of course, the part with regard to punishment, which is altered; but with that exception, it is a verbatim copy.

Mr. Campbell-Bannerman.

1545. As a matter of fact, the volunteers are enrolled to serve only in the United Kingdom, so that it is not an exception of the powers?—Not at all; they are never sent abroad without their own consent.

The Judge Advocate General.

1546. That section was passed in 1872, was it not?—Yes, it was one of Lord Cardwell's sections; it is only that if volunteers like to go they may go; it is no extension of any power at all.

Mr. Parnell.

1547. Volunteers are expressly prohibited in Ireland by enactment; and yet you propose by a clause in the Mutiny Act to send English volunteers over to Ireland and brigade them with the regular forces?—The clause contains no alteration of the existing law.

The Judge Advocate General.

1548. Is there any alteration of the existing law in Clause 87?—With respect to Clause 87, that clause must go to the India Office; I am told that warrant officers exist only in India, and the military authorities here know nothing of them; I have tried to re-arrange it, but I have not attempted to alter it.

Sir Henry Havelock.

1549. Does not a master gunner come in under the category of warrant officers?—I do not know.

The Judge Advocate General.

1550. Have you any remark to make to the Committee with regard to Clause 88?—At the present moment there are two Acts, one the Marine Mutiny Act and the other the Land Mutiny Act; they differ in a very few immaterial clauses, and I propose, with the consent, I believe, of the counsel for the Admiralty, to settle with him the alterations that are to come in at the end of the clause.

Mr. Staveley Hill.

1551. This is simply a question whether in sufficient words the rights of the Admiralty can be reserved as to marines when serving on shore under naval officers?—That is so.

Mr. Parnell.

1552. At present can you say what are the "other circumstances" in which the marine forces are not subject to the Naval Discipline Act, 1866?—The broad line is this, that whenever the marines are on board ship they are under the Naval Discipline Act, and whenever they are not on board ship, they are soldiers, and under this Act.

Lord Charles Beresford.

1553. Excepting when serving on shore under a naval officer?—Yes, but I meant when they were on shore not belonging to a ship.

1554. The

Mr. Stavelly Hill.

1554. This clause is not inserted with a view to make any alteration of the law at all, is it?—Not the least.

The Judge Advocate General.

1555. What have you to say with regard to Clause 88A?—Clause 88A ought to have a reference to the 107th section of the Mutiny Act.

1556. You do not intend to make any change there?—Not in the least. It re-enacts the third paragraph of Section 107 of the Mutiny Act.

1557. You omit the provision, that a man absenting himself without leave, is to be deemed a deserter, and instead of that you say that "he shall be deemed to be absent from his duty without leave, and shall be liable to be tried by a general or district court martial, composed of officers of Her Majesty's army, as a person subject to military law, and to suffer any punishment not exceeding imprisonment"?—The term "deserter" is struck out, because it was agreed by the Committee that we should not use the term "deserter" for this sort of offences. There was some ambiguity as to how he was to be tried, so that I thought it would be better to put that in expressly.

1558. The difference is that now he is not to be subject to punishment extending to life or limb?—I thought that imprisonment would be considered by the Committee a sufficient punishment for an offence, which in effect does not amount to more than a breach of contract.

Mr. Hayter.

1559. He may be tried now, under your new clause, for absence without leave, instead of, as under the old Act, for desertion?—Yes; the Committee agreed that we should fine down desertion in almost all instances to absence without leave.

The Judge Advocate General.

1560. What is Clause 88 B?—It is Clause 13 of the Army Reserve Act.

1561. These clauses are merely intended to repeat the existing law as regards these offences?—Yes, adapting it to the new form in which we put the Bill. The next clause is intended to be put in the form in which it was decided that it should be put. The 50th section of the Mutiny Act says that, "If any man while belonging to any regiment or corps of the regular, reserve, or auxiliary forces, shall, without being discharged by the proper authorities therefrom, enlist or be enrolled, or attempt to enlist or be enrolled, in any regiment or corps, whether of the regular, reserve, or auxiliary forces, he shall be liable to be tried before a court-martial on a charge of desertion;" and then it goes on with a long rigmarole about the stoppages. The Committee decided that desertion, when it took place with a view to enlist in some other regiment, should be deemed fraudulent enlistment; therefore I have called it "fraudulent enlistment."

1562. We come now to Part IV. of your scheme, Clause 90; have you any remark to make upon that?—Part IV., beginning with Clause 90, and ending with Clause 110, is, I believe throughout a consolidation of the existing sections of the Mutiny Act. I am not aware that there is any alteration whatever, but I can go through the clauses, if the Committee desire  
0.111.

The Judge Advocate General—continued.

it. Clause 91 is, "Record of civil conviction of soldier to be forwarded to commanding officer." I could not explain it more fully without comparing it with the Mutiny Act, but really there is no change whatever.

1563. Will you direct your attention to Clause 91, and see whether there is not a repetition of something which is already enacted as to evidence?—Yes, there was a repetition before. The clauses in Part IV. are re-arranged, and in some cases re-written; but there is no intentional alteration of substance in any clause.

1564. With regard to Clause 97, you took a note, I think, at the last sitting of the Committee, that the last paragraph in Clause 82 was to be struck out?—Yes.

1565. Therefore the whole of the law which concerns that point will be comprised in Clause 97?—It will.

1566. As to Clauses 98 to 110, are they the same in substance as the existing law?—Yes, I believe they are *verbatim* the same.

Mr. Hayter.

1567. In Clause 96 "a soldier" is substituted for a great many other words in the corresponding clause of the Mutiny Act; "a soldier" may not represent all those people defined in Clause 40 of the Mutiny Act?—I propose to define "a soldier" to mean everybody for the time being subject to military law who is not an officer.

Sir Henry Havelock.

1568. Would camp followers be subject to the Mutiny Act under Clause 97?—Yes; and I fail to see why a camp follower should not be subject to military law.

Colonel Mure.

1569. With regard to this question of bastardy and including in the 97th clause all the camp followers; in a certain sense, a soldier is rather relieved of the liabilities that civilians incur; he is not to be treated as a "rogue and vagabond," or as "an incorrigible rogue;" and yet you are going to give a lot of civilians privileges that a soldier has not in regard to bastardy?—I will take notice of that throughout.

General Shute.

1570. Could you not alter the definition of "a soldier"?—It is extremely difficult. I do not see why a militiaman or a volunteer during the time that he is actually subject to military law, should not enjoy the privileges as well as undergo the disadvantages, of the position. Of course a volunteer, during the period that he is subject to military law, is just as much a soldier as a private in the regular army.

Colonel Mure.

1571. He is in quite a different position from a camp follower?—Quite so. I can very easily deal with a camp follower, but I submit that there would be considerable difficulty in distinguishing between the several classes of soldiers, and I should hope the Committee would consider before they insist upon it.

Sir Henry Havelock.

1572. A volunteer when he is embodied for service, must come under the 97th clause, must he not?—I think so.

R

1573. Might

Sir  
H. Thring,  
K.C.B.  
12 July  
1878.



Sir  
H. Thring,  
K.C.B.  
12 July  
1878.

Mr. Parnell.

1573. Might it not be of advantage to bring volunteers under Clause 96?—I should be very glad if the Committee would give me an instruction to do so. I should, as a draughtsman, very respectfully submit to the Committee that where we make the volunteer and militia part of the army, so long and during such time as they are parts of the army, they ought to enjoy the privileges as well as under the disabilities of the position, and that therefore we ought not to distinguish between them. If they are part of the army for one purpose, they are part of the army for the other.

*The Judge Advocate General.*

1574. If you want to give this protection to a militiaman or volunteer serving in the army, you would have to insert certain words there, would you not?—I have taken care, after what the Committee have been good enough to tell me, to see that "soldier" in certain clauses does not cover "camp follower;" but I shall include everybody who is for the time being subject to military law; in other words, volunteers and militia when called out. (Mr. Clode.) The origin of the 96th Clause was that really collusion used to take place, and men used to get out of the army by having debts sworn against them.

Mr. Campbell-Bannerman.

1575. Just as they escaped irksome military duty by having children sworn against them?—Yes.

Mr. Parnell.

1576. (To Sir Henry Thring.) Would not a volunteer while subject to military law be a soldier?—That is what I propose: that when he is subject to military law he should be a soldier to all intents and purposes and in every respect.

Colonel Loyd Lindsay.

1577. With regard to the last few lines of Clause 104 as to exchanges; "and any person who negotiates, acts as agent for, or otherwise aids or connives at any exchange in respect of which any sum of money or other consideration has been given or received shall be guilty of misdemeanour;" that will not stand, I suppose, will it?—No, that is modified by a late Act.

Colonel Mure.

1578. Might not Clause 106 be made more stringent against the shop-sellers to whom soldiers sell their kits?—I will take a note of that.

*The Judge Advocate General.*

1579. (To Mr. Clode.) Is there any necessity for keeping in Clause 107?—It is one of the oldest sections in the Act. (Sir Henry Thring.) It only applies to officers.

1580. Is not the matter dealt with in Clause 108 rather foreign to the issue; does it not belong rather to licensing legislation?—It ought not to be in this Act.

1581. Do you consider Clause 109 a disciplinary clause?—I will transfer these clauses to another place. They are clauses of which I know nothing.

Sir Henry Havelock.

1582. Is not Clause 108, as to canteen licences, still applicable?—I think it is; but it is sug-

Sir Henry Havelock—continued.

gested that it is scarcely suited to an Army Discipline Bill.

*The Judge Advocate General.*

1583. Is there any other point as to the clauses upon which you have anything to say?—I think the only other question is as to Clause 117. The question there is the very important one of active service. These saving clauses ought properly to be in the annual Bill; they are very difficult clauses for a draughtsman to deal with, but they are simply technical savings of the old Acts.

1584. Clause 111 is new, is it not?—I think that is only to make it quite clear (as is in fact the law) that, for the purposes of imprisonment, a part of a day is to be reckoned as a whole day. I do not know why this was put in, except for the obvious purpose of alleviating the position of the soldier. There is a very important definition of active service, but besides that, the clauses are all very simple.

1585. Clause 112 is the same as before, is it not?—Yes; these clauses will certainly require re-adjustment.

General Shute.

1586. The Interpretation Clause says: "The expression 'Commander in Chief' includes the field marshal, or other officer, commanding in chief Her Majesty's forces for the time being"; are not the words "field marshal or other" mere surplusage?—That may be so. That definition is not unnecessary; there is technically no commander in chief; it is the "Field Marshal Commanding in Chief."

1587. Ought not the Secretary of State to come before the Commander in Chief?—That can be altered if the Committee desire it.

*The Judge Advocate General.*

1588. Is the definition of the Secretary of State necessary?—I do not think the latter part of it is; it is necessary to put "one of Her Majesty's principal Secretaries of State."

Mr. Campbell-Bannerman.

1589. (To Mr. Clode.) Is there not a sort of standing definition of the words "Secretary of State"?—I think there are 18 Statutes in which he is defined.

Sir Henry Havelock.

1590. (To Sir Henry Thring.) Your new suggestion as to "active service" is a limitation of what we have had before, is it not?—I think not. "The expression 'on active service,' as applied to a person subject to military law, means whenever he is attached to, or forms part of, a force which is engaged in operations against the enemy, or is engaged in military operations in a country or place wholly or partly occupied by an enemy, or is in military occupation of any foreign country. The expression 'enemy' includes all armed mutineers, armed rebels, armed rioters, and pirates."

Colonel Mure.

1591. Would that include rioters in this country?—Yes; if, for instance, the military were ordered out at Bristol in case of riot, it would include Bristol.

1592. May

Sir *Henry Havelock*.

1592. May not rioters be in a state of active riot without being armed?—Men with pitchforks, for instance, would be armed.

*The Judge Advocate General*.

1593. Has there ever been any construction of the word "armed"?—I think not.

1594. Would sticks and stones be considered arms?—I think not.

*Mr. Campbell-Bannerman*.

1595. There may be rebels, but if they are not "armed rebels," that is to say, if they are only quiescent rebels, a man engaged in operations against them would not be on active service, would he?—I think we had better strike out the word "armed."

*Mr. Hayter*.

1596. Why do you put yeomanry with volun-

*Mr. Hayter—continued*.

teers?—Because they are volunteers; otherwise, whenever I put in "volunteers" I must put in "and yeomanry," and I think it is more convenient to have "volunteer forces" throughout, unless the Committee think otherwise; it is simply for the purpose of shortening the language, and also because I think the volunteer forces, properly constituted, would include the yeomanry.

1597. It is "yeomanry or volunteers" in the present Act?—Yes; but in order to remove the doubt which arose under the Mutiny Act, I thought I had better put a definition here that it did include them; all the rest is unimportant.

*The Judge Advocate General*.

1598. I believe the volunteer question is the only question now left open on this part of the Bill?—It is.

Sir  
*H. Thring*,  
K.C.B.  
12 July  
1878.

*Tuesday, 16th July 1878.*

MEMBERS PRESENT :

Mr. Campbell-Bannerman.  
Lord Elcho.  
Admiral Egerton.  
Sir William Harcourt.  
Sir Henry Havelock.  
Mr. Hayter.  
Mr. Herschell.

Viscount Hinchinbrook.  
The Judge Advocate General.  
Colonel Loyd Lindsay.  
Major O'Beirne.  
Mr. Parnell.  
General Shute.

SIR WILLIAM GEORGE GRANVILLE VERNON HARCOURT, Q.C.,  
IN THE CHAIR.

Sir HENRY THRING, K.C.B., re-called; and further Examined.

*Chairman.*

Sir  
H. Thring,  
K.C.B.  
—  
16 July  
1878.

1599. THE Committee have been discussing at considerable length the question of volunteer courts martial; and as far as we can understand the present law is in great confusion. The 151st Article of War, which appears, as to the latter part of it, to be very recent, seems to contemplate that where there are militia, yeomanry, or volunteers attached to a body of regular troops, then the officers of the regular force shall be competent to sit upon courts martial, in the same manner as officers of the force to which the accused belongs; that seems to contemplate that where the volunteers or militia are attached to a regular body of troops, officers of the regular army may sit upon a court martial by which a volunteer is tried; but that seems to be contrary to the provisions of the Volunteer Act of 1863, for there it says that in case of actual military service a court martial for the trial of an officer of the volunteer force shall be composed of officers of the volunteer force only; a thing which I take it for granted could not be altered by the Articles of War?—Certainly not.

1600. Then the Act of 1871 applies that section to the case of volunteers acting with a regular force, which of course would carry with it the same provision?—Yes.

1601. So far as the Committee can understand, at present the law would not permit of a volunteer belonging to a volunteer regiment acting with the regular forces, being tried by a court martial consisting of anybody except officers of the volunteer force?—I went through the whole of the law as well as I could, and I have come to the same conclusion as you, Sir, have done, that at all events it is extremely doubtful whether positive clauses for the benefit of the subject, such as those contained in the Volunteer Act, can be overruled by casual and incidental expressions in the Mutiny Act; and inasmuch as the Articles of War distinctly could not interfere with the Statute, I should come to the conclusion that volunteers cannot be tried except by their own officers; but the law is excessively complicated.

1602. Before we decide the question, I should like to know exactly what the proposal is that

*Chairman—continued.*

you make in your Bill with regard to such cases?—The proposal that I make is, that whenever the volunteer forces, or the militia, or indeed any other force except the regular forces, form part of the regular forces, either by being brigaded with them, or by being trained or exercised with them, or by coming out on field days with them (I am not certain what military term I ought to use), they should be to all intents and purposes part of those regular forces; that they should be tried in the same way, and punished in the same way; and that the officers should be interchangeable on courts martial.

*Lord Elcho.*

1603. Would the conditions under which they are serving be the same in all respects in all the circumstances that you have mentioned?—No. What I stated to be in my opinion the logical mode of defining the relations of the several forces to each other, was this: that the volunteers, and the militia, and the yeomanry, and the reserve, and the regular forces, all formed part of the Queen's Army, but that they were subject to different conditions of service; that the volunteers were subject to the least onerous conditions of service of all, because it was entirely voluntary except in the case of some particular instance of their being called out (and I am not quite certain whether they can be called out); that the militia service is the next in order, because a militiaman is bound to come out under certain conditions; the reserve man again is under other conditions of service; and of course the regular forces are always in Her Majesty's Service. What I was ordered to submit to the Committee on behalf of the War Office was, that subject to the conditions of service, whenever the volunteers form part of the regular forces, they should be so to all intents and purposes.

*Mr. Herschell.*

1604. You mean that a volunteer officer should be equally eligible with an officer of the regular army, to sit on a court martial on a soldier of the regular army?—Certainly, and militia officers the same. The War Office or the Secretary of State might

Mr. *Herschell*—continued.

might of course make rules that a volunteer officer should not sit on a court martial, unless he had shown that he was competent; but that would be beside the statute. For statutory purposes the proposal that I was instructed to offer was, that they should be technically precisely the same when together.

Lord *Elcho*.

1605. What do you suppose was the reason which led those who laid down the principles upon which these different forces were disciplined to make those principles differ as between the army, and the militia and volunteers?—Historically, of course, I consider that whereas both the militia and the volunteers were, before the system which was introduced by Lord Cardwell, upon an entirely different footing from the regular army, now they are upon the same footing. You must not take my words to the very foot of the letter; militia commissions and volunteer commissions used both, I think, to be given by the lords lieutenant, and now they are given by the Queen.

1606. But in time of peace, at those brigade drills with the regular army, so long as the volunteers are not embodied and called out by the Crown, is there not this broad distinction betwixt the soldier who serves and the volunteer who serves, that the one is paid and the other is unpaid?—Certainly; but I should reply, as I told the Committee Colonel Greaves did; he said, "We cannot allow a regiment of volunteers and a regiment of our forces to stand together and to act together upon a field-day, and that it shall be allowable for a volunteer to knock down his officer without being punished in the same way as our troops are."

Chairman.

1607. We have already, in the progress of this Bill, determined to subject camp followers to the provisions of the Mutiny Act in all respects; I need hardly say that the conditions of service of a camp follower are very different from those of a regular soldier?—Certainly; moreover, militia officers are always under the Mutiny Act, at the present moment, by statute.

Lord *Elcho*.

1608. As the law now stands, would not the case of a volunteer knocking down his officer be summarily dealt with if he were brigaded with regular troops?—That depends upon the construction put upon that particular section of the Regulation of the Forces Act, to which the Chairman very rightly said that I had not directed sufficient attention. The Chairman, I believe, thinks it would apply at all times; I should have thought that there would be a difficulty with respect to field-days. The question that you are asking me was brought specifically to my attention by the Chairman, in reference to the construction of that clause of the Regulation of the Forces Act.

Mr. *Herschell*.

1609. I apprehend that it is a question rather of the constitution of the tribunal than of the punishment, and that, whether you have regulars forming part of the force, or whether it consists

Mr. *Herschell*—continued.

of volunteers only, the law administered is supposed to be the same?—I submitted that, even assuming the law to be the same, it is unworkable, owing to the difficulty of trying volunteers. You practically cannot constitute a court martial of volunteers only; and therefore it is essential, if the law is to be applicable, to put all the forces upon one footing.

Lord *Elcho*.

1610. Are you aware of that impossibility ever having arisen?—No; because I believe that, as a matter of fact, there has never been occasion to try these volunteers seriously; but it has been represented that there may be an occasion, and that, therefore, it is very essential to provide for it.

1611. In answer to Question 1507, you say you do not ask the Committee to alter the law as regards the volunteers, except in so far as we may add to it by including a field day: what is your idea of a field day; do you reckon it as a field day when a volunteer force goes out by itself, or only when it is brigaded with the regular troops?—What I meant to say was, that whenever volunteers went out with the regular troops then they ought to be treated like the regular troops. As to whether it ought to apply to volunteers exercising by themselves, I gave no opinion, and I give no opinion. What I submitted to the Committee was that I could not quite agree that the 9th section of the Regulation of the Forces Act necessarily applied to a field day, and that if it were intended to do so, it would be better to add a few words.

Chairman.

1612. Section 9 of the Act of 1871 only applies, of course, to volunteers brigaded with regular troops?—Clearly; and that section is not intended to apply to them when alone.

General *Shute*.

1613. The difficulty of finding officers to try their men does not apply to the regular forces, does it?—No.

1614. Then why call in the assistance of men who have no practical knowledge of court martial duties?—Because, as I explained to the Committee, I thought it was not right to make so broad a distinction between the volunteer officers and the regular officers. If they are to submit to the same punishment the officers of the one force ought, if competent, to be able to sit on courts martial to try those of the other force. That was what I was instructed to submit to the Committee, and it seems to me just.

Chairman.

1615. Have we now gone through all the substantial clauses of the Army Discipline Bill?—Yes.

1616. With regard to Clause 76, and the following clauses, which are regulations as to imprisonment, is there any point in those clauses which it is necessary that the Committee should consider?—There is no point whatever for the consideration of the Committee. The clauses are intended to be a consolidation of the present law, and the questions which arise upon them are departmental questions altogether.

Sir  
H. Thring,  
K.C.B.  
16 July  
1878.

Mr. JAMES CORNELIUS O'DOWD, re-called ; and further Examined.

*The Judge Advocate General.*

Mr. O'Dowd. 1617. WITH regard to Clause 71, did you ever know a case in which a Judge Advocate General advised the Queen that a sentence should not be confirmed, and it was confirmed?—No, never.

*Mr. Hayter.*

1618. May I ask whether, in your experience, district courts martial are not sometimes re-assembled for the purpose of increasing the severity of their former sentence?—Yes, both for the purpose of increasing the severity of the punishment, and of reversing a finding of acquittal. When a court acquits, the confirming officer occasionally re-assembles the court for the purposes of asking them to convict. That occurs occasionally ; I think it would be too much to say that it occurs frequently.

1619. Could you give us one case?—I recollect a rather remarkable case which occurred at Gibraltar not long ago, in which a soldier got five years' penal servitude for an act of violence towards an officer ; the general officer re-assem-

*Mr. Hayter—continued.*

bled the court, and pointed out to them that five years was inadequate ; and then they gave the man 10 years. I could give several instances of a minor kind, but that is perhaps more in my mind, on account of the great difference between the original and the revised punishment.

1620. You speak distinctly as to the practice still obtaining?—It occurs occasionally.

1621. Are you aware whether it obtains at all in the case of regimental courts martial?—I see very little of regimental courts martial, but I have known an occasional case of that kind. I see so little of regimental courts martial that I am hardly an authority. Probably I read 30 in a year, those being especially referred to our department in a case where a general officer, under whom the regiment is serving, may consider that some illegality has taken place, or some doubtful questions have arisen, and he refers them to us.

1622. With regard to district courts martial, you speak from your own knowledge?—Certainly ; that is within my own knowledge.

*Friday, 26th July 1878.*

## MEMBERS PRESENT:

Mr. Campbell-Bannerman.  
Lord Elcho.  
Admiral Egerton.  
Sir Alexander Gordon.  
Sir William Harcourt.  
Sir Henry Havelock.  
Mr. Hayter.  
Mr. Staveley Hill.  
Viscount Hinchinbrook.

Mr. John Holms.  
The Judge Advocate General.  
Colonel Loyd Lindsay.  
Mr. Merewether.  
Colonel Mure.  
Major O'Beirne.  
General Shute.  
Sir Henry Wilmot.

SIR WILLIAM GEORGE GRANVILLE VERNON HARCOURT, Q.C.,  
IN THE CHAIR.

Sir HENRY THRING, K.C.B., re-called; and further Examined.

*Chairman.*

1623. WILL you kindly hand in to the Committee the Papers which it will be proper to put into the Appendix to the Report?—I propose to hand in Paper No. 1, being the scheme of an Army Discipline Bill, which I have had the honour to submit to the Committee. I propose to hand in Paper No. 2, showing the provisions of the Mutiny Act and Articles of War, arranged under headings, which I also submitted to the Committee. I propose to hand in Paper No. 3, which is called Army Discipline Bill, Part III.; it is intended to be a substitute for Part III. of the original scheme, and I have appended to it a note stating that that is its object. I propose, lastly, to hand in Paper No. 4, which I have called the Army Discipline Annual Bill, which is the Bill intended to attract from year to year the Army Discipline Act, supposing it to be passed. The preamble of the Bill is the same as that of the existing Mutiny Act; I have only altered some of the terms respecting the application of the Act contained in 110th section, on the ground that such terms are obsolete. For example, if you look at the Mutiny Act, Section 110, you will find that it is brought into operation at different times in Great Britain, in Ireland, and in the Channel Islands; it then goes on to mention the garrison of Gibraltar, the Mediterranean, and Spain and Portugal; it then goes on to mention Europe and Her Majesty's Indian Possessions, British Columbia, and Vancouver's Island. Obviously those countries have been introduced from time to time when they were occupied by troops, and those provisions have become in great measure obsolete; and I propose to bring the Act into operation within the United Kingdom and the Channel Islands from the day of to the day of; and then I add the general clause: "and in all other places beyond the United Kingdom from and after the promulgation thereof in general orders." That is simply to

*Chairman—continued.*

make it workable. (*Papers Nos. 1, 2, 3, 4, were handed in. See Appendix.*)

*Sir Alexander Gordon.*

1624. Is this Bill that is now presented to us an exact reprint of the first Bill that was laid before us?—Paper No. 1 in the Appendix is an exact reprint of the first Bill, because I did not consider myself justified in altering anything.

*Sir Henry Havelock.*

1625. In the 35th Clause of the Bill as it stands there is a distinction made, which does not exist in the present law, with regard to the punishment for fraudulent enlistment; in Sub-section 1 of that clause the punishment is left, as at present, that is to say, for the first offence it is to be any punishment not exceeding imprisonment; but, in Sub-section 2, it is laid down that for the second or any subsequent offence the person offending is to be liable to suffer any punishment not exceeding penal servitude; why is that distinction drawn?—I went at the time most fully into it. I circulated a Memorandum, and I informed the Committee at the time that that clause was an entirely new clause, that it was proposed by the permission of the War Office, and as a substitution for calling every offender of that class a deserter. I think you will find it explained at great length in the evidence.

1626. In Sections 12 to 15, the militia are not included, are they?—I have substituted for that the other Paper, Part III. I told the Committee that I had not time to go through Part III. with the War Office, whereupon, in the interim, by the leave of the Committee, and with their approbation, I re-drew the whole of Part III.; and I submit that to the Committee as Paper, No. 3.

1627. In the new Part III., are the militia included?—Yes; in the 11th Sub-section of the 84th Clause.

Sir  
H. Thring,  
K.C.B.  
26 July  
1878.

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# A P P E N D I X.

## Appendix, No. 1.

PAPER handed in by Sir Henry Thring.

### SCHEME OF AN ARMY DISCIPLINE BILL.

Appendix, No. 1.

#### ARRANGEMENT OF CLAUSES.

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DRAFT  
OF A  
B I L L  
FOR  
Consolidating and amending the LAW relating to the DISCIPLINE of HER  
MAJESTY'S ARMY, and to other matters.

BE it enacted by the Queen's Most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows :

*Preliminary.*

1. This Act may be cited for all purposes as "The Army Discipline Act." Short title of Act.
2. This Act shall not come into force, except in pursuance of some Act of Parliament to be hereafter passed bringing the same into force, and shall continue in force only for such time as may be specified in such last-mentioned Act. Mode of bringing Act into force.
3. This Act is divided into five parts, relating to the following subject matters ; that is to say— Division of Act.
  - Part I. Military Law :
  - Part II. Administration of Military Law :
  - Part III. Application of Military Law :
  - Part IV. General Provisions :
  - Part V. Saving Clauses and Definitions.

PART I.  
MILITARY LAW.

*Misconduct on Service.*

4. Every person subject to military law who, when on active service— Abandonment of post and misbehaviour in field.
  - (1.) Abandons or delivers up, or uses any means to compel or induce any officer, or any other person, to abandon or deliver up, any post which it was his duty to defend ; or,
  - (2.) Casts away his arms or ammunition or tools before an enemy ; or
  - (3.) Leaves his post or his superior officer to go in search of plunder ; or
  - (4.) Intentionally occasions false alarms ; or
  - (5.) In any way misbehaves, or induces others to misbehave, before an enemy, shall be liable to suffer death, or such other punishment as is in this Act mentioned.
5. Every person subject to military law who, when on active service— Plunder and violence.
  - (1.) Forces a safeguard ; or,
  - (2.) Plunders or does violence to any friendly inhabitants of the country in which he is serving ; or,
  - (3.) Breaks into any house, or other place, in search of plunder, shall be liable to suffer death, or such other punishment as is in this Act mentioned.
6. Every person subject to military law who— Treacherous correspondence with enemy.
  - (1.) Treacherously holds correspondence with, or gives advice or intelligence to, the enemy ; or,
  - (2.) Without due authority treats or enters into terms with the enemy ; or,
  - (3.) Treacherously makes known the watchword to any person not entitled to receive it ; or
  - (4.) Relieves the enemy with any supplies ; or,

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s 3

(5.) In

Mutiny Act,  
15.  
Art. of War,  
52.

Art. of War,  
58.  
Art. of War,  
53.

Art. of War,  
55.  
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15.  
Art. of War,  
52.

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58.  
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Mutiny Act  
15.

Art. of War,  
51.

Art. of War,  
54.

Art. of War,  
51.

Abandonment of  
post and misbe-  
haviour in field.

Mutiny Act, 15,  
pp. 31, 32.

Arts of War, 52, 53,  
55, 56, pp. 315, 316.

Plunder and vio-  
lence.  
Art. of War, 58,  
p. 316.

Treacherous cor-  
respondence with  
enemy.  
Mutiny Act, 15,  
pp. 31, 32.  
Arts. of War, 51,  
54, pp. 315, 316.

## Appendix, No. 1.

Leaving ranks, or being taken prisoner through negligence.

Arts. 59, 60, 64, 65, pp. 316, 317.

(5.) In any way knowingly assists, harbours, or protects the enemy, shall be liable to suffer death, or such other punishment as is in this Act mentioned.

Art. of War, 51.

7. Every person subject to military law who, when on active service—

(1.) Without orders from his superior officer, leaves the ranks in order to secure prisoners or horses, or on pretence of taking wounded officers or men to the rear; or,

Art. of War, 64.

(2.) Without orders from his superior officer, leaves his guard picquet or post; or,

Art. of War, 65.

(3.) Is taken prisoner by want of due precaution, or through disobedience of orders; or,

Art. of War, 65.

(4.) Without good and sufficient cause gives a parole or watchword different from what he received; or,

Art. of War, 60.

(5.) Without due authority sends a flag of truce to the enemy, or holds any correspondence with the enemy,

Art. of War, 59.

shall be liable to suffer any punishment not exceeding imprisonment.

False alarms.

Arts. 61, 62, p. 317.

8. Every person subject to military law, who when on active service—

(1.) By word of mouth or in writing spreads reports calculated to create unnecessary alarm or despondency; or,

Art. of War, 61.

(2.) In action, or previously to going into action, uses words calculated to create alarm or despondency,

Art. of War, 62.

shall be liable to suffer any punishment not exceeding imprisonment.

Injurious disclosures.

Art. of War, 63, p. 317.

9. Every person subject to military law who without due authority—

Either verbally or in writing discloses the numbers, position, magazines, or preparations, or orders relating to operations or movements of the army,

Art. of War, 63.

shall be liable to suffer any punishment not exceeding imprisonment.

Destruction of property.

Art. of War, 103, p. 333.

10. Every person subject to military law who, when on active service—

Wilfully destroys or damages any property, unless such destruction or damage be ordered by his superior officer,

Art. of War, 103.

shall be liable to suffer any punishment not exceeding imprisonment.

Misappropriation of supplies.

Art. of War, 66, p. 318.

11. Every person subject to military law who, when on active service—

(1.) Irregularly detains or appropriates to his own corps or detachment any supplies proceeding to the army, contrary to any orders which may be issued in that respect,

Art. of War, 66.

shall be liable to suffer any punishment not exceeding imprisonment.

*Punishment of Sentinel.*

Sentinel sleeping on post.

Mutiny Act, 15, p. 32.

Art. 57, p. 316.

12. Every soldier who, being a sentinel—

(1.) Sleeps or is drunk on his post; or,

Mutiny Act, 15.

(2.) Leaves his post before he is regularly relieved,

Art. of War, 57.

shall, if he commits any such offence on active service, be liable to suffer death, or such other punishment as is in this Act mentioned; if not on active service, shall be liable to suffer any punishment not exceeding imprisonment.

*Mutiny and Insubordination.*

Mutiny.

Mutiny Act, 15, p. 31.

Art. of War, 36, p. 307.

13. Every person subject to military law who—

(1.) Excites, joins in, or conspires with any other person or persons to cause any mutiny or sedition; or,

Mutiny Act, 15.

(2.) Endeavours to seduce any person from allegiance to Her Majesty, or to persuade any person to join in any mutiny or sedition; or,

Art. of War, 36.

(3.) Does not use his utmost endeavours to suppress any mutiny or sedition; or,

Mutiny Act, 15.

(4.) Coming to the knowledge of any actual or intended mutiny or sedition, does not without delay inform his commanding officer of the same,

Art. of War, 36.

shall be liable to suffer death, or such other punishment as is in this Act mentioned.

Mutiny Act, 15.

Art. of War, 36.

14. Every person subject to military law who—

Strikes or uses or attempts any violence to his superior officer, being in the execution of his office,

Mutiny Act, 15.

shall be liable to suffer death, or such other punishment as is in this Act mentioned.

Art. of War, 37.

15. Every person subject to military law who—

Disobeys any lawful command of his superior officer,

Mutiny Act, 15.

shall, if he commits such offence on active service, be liable to suffer death, or such other punishment

Art. of War, 38.

Striking superior officer in execution of his office.  
See Simmons, p. 79.  
Mutiny Act, 15, p. 31.  
Art. of War, 37, p. 307.  
Disobedience.  
Art. of War, 38, p. 307.

punishment as is in this Act mentioned; if not on active service, shall be liable to suffer any punishment not exceeding penal servitude. Appendix, No. 1.

**16. Every person subject to military law who—**

Mutiny Act,  
15.  
Arts. of War,  
37, 41.  
Art. of War,  
41.  
Art. of War,  
39.  
Art. of War,  
40.  
Art. of War,  
68.

- (1.) Strikes or uses or attempts violence to his superior officer otherwise than as aforesaid, or uses threatening or insubordinate language to his superior officer; or,
- (2.) Behaves with contempt to his superior officer; or,
- (3.) Uses traitorous or disrespectful words regarding the Sovereign; or,
- (4.) Being concerned in any fray, refuses to obey any officer (though of inferior rank) who orders him into arrest, or uses or attempts violence to any such officer; or,
- (5.) Impedes the provost marshal or any other officer legally exercising authority, or, when called on, refuses to assist the provost marshal or any other officer legally exercising authority; or,

Art. of War,  
161.

- (6.) Is intentionally guilty of any contempt towards any court-martial by using insolent or threatening language, or by causing any interruption or disturbance in its proceedings,

shall be liable to suffer any punishment not exceeding imprisonment.

Insubordinate behaviour.  
Naval Discipline Act, ss. 17 and 18.  
Mutiny Act, 15, p. 31.  
Arts. of War, 37, 39, 40, 41, 68, 161, pp. 307, 308, 318, 368.

*Desertion and Absence without Leave.*

Mutiny Act,  
15.  
Art. of War,  
42.

**17. Every person subject to military law who deserts Her Majesty's service shall be liable to be punished as follows; that is to say,**

Desertion.  
Naval Discipline Act, 19.

- (1.) If he has deserted to the enemy, to suffer death, or such other punishment as is in this Act mentioned; and

- (2.) If he has deserted under any other circumstances, to be punished with penal servitude, or such other punishment as is in this Act mentioned.

Mutiny Act, s. 15, p. 31.  
Art. of War, 42, p. 309.  
Attempt to desert.

Mutiny Act,  
15.  
Art. of War,  
42.  
Art. of War,  
44.

**18. Every person subject to military law who—**

- (1.) Attempts to desert Her Majesty's service; or,
- (2.) Assists, persuades, or endeavours to persuade any person to desert Her Majesty's service; or,

Persuasion of or connivance at desertion.

Art. of War,  
44.

- (3.) Being cognisant of any desertion or intended desertion, does not forthwith give notice to his commanding officer, or cause the deserter to be apprehended by the civil power,

Art. of War, 44, p. 310.

shall be liable to suffer any punishment not exceeding imprisonment.

Art. of War,  
50.

**19. Every person subject to military law who—**

Absents himself from his duty without leave, shall be liable to suffer any punishment not exceeding imprisonment.

Absence from duty, without leave.  
Art. of War, 50, p. 313.

Art. of War,  
50.

**20. Every soldier who—**

When in camp or garrison or elsewhere, is found beyond any limits prescribed by his commanding officer, or in any prohibited place, without a pass or written leave from his commanding officer,

Going beyond prescribed limits.  
Art. of War, 50, p. 313.

shall be liable to suffer any punishment not exceeding imprisonment.

*Disgraceful Conduct.*

Art. of War,  
79.

**21. Every officer who being subject to military law—**

Behaves in a scandalous manner, unbecoming the character of an officer and a gentleman, shall be liable to any punishment not exceeding cashiering.

Scandalous conduct of officer.

Art. of War, 79, p. 322.

**22. Every soldier who—**

Art. of War,  
81.  
Art. of War,  
81.

- (1.) Malingers, or feigns or produces disease or infirmity; or,
- (2.) Wilfully maims or injures himself or any other soldier, whether at the instance of such other soldier or not, or causes himself to be maimed or injured by any other person, with intent thereby to render himself or such other soldier unfit for service; or,
- (3.) Steals any money or goods the property of a comrade or of an officer, or money or goods belonging to any regimental mess or band, or to any other regimental fund; or,

Feigning disease, self-injury, and injury to another soldier.

Art. of War, 81, p. 323.

Art. of War,  
81.

- (4.) Is wilfully guilty of any misconduct, or wilfully disobeys any orders, whether in hospital or otherwise, by means of which misconduct or disobedience he produces or aggravates disease or infirmity, or delays its cure,

shall be liable to suffer any punishment not exceeding imprisonment.

## Appendix, No. 1.

General disgraceful  
conduct of soldier.  
Art. of War, 81,  
p. 324.

**23. Every soldier who—**

Is guilty of any disgraceful conduct of a felonious, fraudulent, cruel, indecent or unnatural kind, not in this Act otherwise particularly specified, shall be liable to suffer any punishment not exceeding imprisonment. Art. of War, 71.

*Drunkenness.*

Regulations as to  
drunkenness.

Arts. of War, 76, 77,  
p. 320.  
*Suggestion.*

**24. The following regulations shall be made with respect to the punishment of drunkenness as respects persons subject to military law :**

(1.) Every officer who is guilty of drunkenness, whether on duty or not on duty, shall be liable to suffer any punishment not exceeding cashiering : Art. of War, 76.

(2.) Every soldier who is guilty of drunkenness, whether on duty or not on duty, shall be liable to suffer any punishment not exceeding imprisonment, and may, in addition to or without any such punishment, be fined any sum not exceeding 1 l. Art. of War, 77.

Provided that the stoppage from a soldier's pay under this section shall not in any case exceed 4 d. per day.

*Offences in relation to Prisoners.*

Irregular imprison-  
ment.

Arts. of War, 72, 73,  
74, p. 319.

**25. Every person subject to military law who—**

(1.) Unnecessarily detains any prisoner in arrest or confinement without bringing his case before the proper authority for investigation ; or, Art. of War, 74.

(2.) Being in charge of a guard, does not within twenty-four hours, after any prisoner comes within his charge, or as soon as he is relieved from his guard or duty, give in writing to the officer to whom he may be ordered to report the prisoner's name and crime, and the name and rank of the officer or other person by whom he was charged ; or, Art. of War, 72.

(3.) Releases without proper authority any prisoner committed to his charge, or wilfully or negligently suffers him to escape, Art. of War, 73.  
shall be liable to suffer any punishment not exceeding imprisonment.

Escape from con-  
finement.

Art. of War, 69,  
p. 318.

**26. Every person subject to military law who—**

Being under arrest or in prison, or otherwise in lawful custody escapes, or attempts to escape, Art. of War, 69.  
shall be liable to suffer any punishment not exceeding imprisonment. Mutiny Act, 17.

*Offences in relation to Property.*

Stealing and embez-  
zlement.

Mutiny Act, 17,  
p. 33.  
See Arts, 80, 81,  
p. 324.

Corrupt dealings in  
respect of supplies  
to forces.

Art. of War, 67,  
p. 318.

**27. Every person subject to military law, who being officially charged with the care or distribution of any public money or articles for public use, steals or embezzles the same, or is concerned in or connives at stealing or embezzlement thereof, shall be liable to suffer any punishment not exceeding penal servitude.** Arts. of War, 80, 81.

**28. Every person subject to military law who—**

Having to perform any duty in regard to the sale, purchase, or supply of provisions or merchandise, or horses, to any forces, or in regard to the letting or hiring of houses, receives any fee or gratuity in respect thereof, or connives at the exaction of exorbitant prices, Art. of War, 67.  
shall be liable to suffer any punishment not exceeding imprisonment.

Deficiency in and  
injury to equipment.

Art. of War, 102,  
p. 332.

**29. Every soldier who—**

(1.) Being deficient in any article of his arms, ammunition, accoutrements, equipments, clothing, or necessaries, or in any article issued for his use or entrusted to his care, does not satisfactorily account for such deficiency ; or, Art. of War, 102.

(2.) Wilfully or from gross negligence injures or destroys any such article as aforesaid, whether belonging to himself or any other soldier ; or, Art. of War, 102.

(3.) Sells, pawns, makes away with, spoils, or wilfully defaces any military decoration granted him ; or, Art. of War, 102.

(4.) Illtreats, or unlawfully sells or makes away with any horse used in Her Majesty's service, Art. of War, 102.  
shall be liable to suffer any punishment not exceeding imprisonment.

*False Returns.*

Connivance in em-  
bezzlement by false  
returns.

Art. of War, 88,  
p. 327.

**30. Every person subject to military law who—**

By any false document, is concerned in or connives at any embezzlement or fraudulent appropriation of any money or property of Her Majesty, or of any officer, soldier, or military body or stores, Art. of War, 88.  
shall be liable to suffer any punishment not exceeding imprisonment.

**31. Every**

**31. Every person subject to military law who—**

Art. of War,  
86.  
Art. of War,  
87.  
Art. of War,  
87.  
Art. of War,  
90.  
Art. of War,  
84.

- (1.) Knowingly utters to any officer or soldier any false official document ; or,
- (2.) Makes or is privy to the making of any fraudulent entry or erasure in any official document used in Her Majesty's service ; or,
- (3.) Wilfully conceals facts which it is his duty to state ; or,
- (4.) Signs any official document in blank ; or,
- (5.) By culpable neglect omits to make or send a report which it his duty to make or send,

shall be liable to suffer any punishment not exceeding imprisonment.

Appendix, No. 1.

Falsifying official documents.

Arts. of War, 84, 85, 87, 90, p. 328.

*Offences in relation to Billetting.***32. Every person subject to military law who—**

Art. of War,  
91.  
Mutiny Act,  
87.  
Art. of War,  
91.  
Mutiny Act,  
87.  
Art. of War,  
91.  
Mutiny Act,  
87.  
Art. of War,  
92.  
Art. of War,  
92.

- (1.) Demands billets for more than his effective men ; or,
- (2.) Takes or knowingly suffers to be taken from any person any money or reward for excusing the quartering of officers or soldiers ; or,
- (3.) Billets any of the wives, children, or servant of any officer or soldier, in any house, against the consent of the occupier ; or,
- (4.) Is guilty of any ill-treatment of the occupier of a house in which men are billeted by violence, extortion, of making disturbances in billets ; or,
- (5.) Being a commanding officer, refuses or neglects to cause reparation to be made for such ill-treatment, after receiving proof of the justice of the complaint ; or,
- (6.) Being an officer commanding any regiment or corps does not take care that his own quarters and billets, and those of all officers and soldiers under his command, are cleared, and the accounts regularly settled at the end of every four days, or, if the troops do not remain four days, before the troops quit their quarters,

shall be liable to suffer any punishment not exceeding imprisonment.

Offences in relation to billeting.

Arts. of War, 91, 92, p. 329.  
Mutiny Act, s. 87, p. 120.

*Offences in relation to Movement of Troops.***33. Every person subject to military law who—**

Art. of War,  
94.  
Mutiny Act,  
87.  
Art. of War,  
94.  
Mutiny Act,  
87.  
Art. of War,  
94.

- (1.) Permits carriages pressed for baggage to be overloaded ; or,
- (2.) Permits the persons attending them to be ill-treated, or to be forced to take upon their carriages (except on emergencies provided for by law) any women, or any soldiers other than the sick and lame ; or,
- (3.) Refuses to certify the sums due for carriages, and the name of the regiment or corps employing them,

shall be liable to suffer any punishment not exceeding imprisonment.

Overloading carriages or ill-treatment of attendants.

Art. of War, 94, p. 330.  
Mutiny Act, 87, p. 120.

*Offences in relation to Attestation.***34. Every person subject to military law who at the time of his attestation—**

- (1.) Wilfully gives a false answer to any question which he is lawfully required to answer ; or,
- (2.) Wilfully conceals any fact which he is lawfully required to disclose,

shall be liable to suffer any punishment not exceeding imprisonment.

False answers on enlistment or attestation.  
Mutiny Act, 42, 51, 95.

**35. Every person subject to military law who—**

When belonging to any regiment, without having first obtained a regular discharge therefrom, enlists himself in Her Majesty's army, shall be deemed to have been guilty of fraudulent enlistment, and shall be liable to be punished as follows ; that is to say—

- (1.) For the first offence to suffer any punishment not exceeding imprisonment ; and
- (2.) For the second or any subsequent offence to suffer any punishment not exceeding penal servitude.

Fraudulent enlistment.

**36. Every person subject to military law who—**

Mutiny Act,  
51.  
Art. of War,  
95.

Wilfully acts in a manner contrary to law in any matter relating to the enlistment or attesting of recruits, or in any manner contrary to law not specified in this Act, shall be liable to suffer any punishment not exceeding imprisonment.

Contravention of regulations as to enlistment.

Mutiny Act, 51, p. 73.  
Art. of War, 95, p. 331.



## Appendix, No. 1.

*Miscellaneous Military Offences.*

Misconduct of chaplain.

Art of War, 34,  
p. 306.

37. Every chaplain subject to military law who—

Is guilty of misconduct or vicious behaviour derogating from the sacred character with which he is invested, Art. of War, 34.  
shall be liable to be discharged from his office.

Illtreating soldier.

Art. of War, 100,  
p. 332.

38. Every person subject to military law who—

Strikes or otherwise illtreats any soldier,  
shall be liable to suffer any punishment not exceeding imprisonment.

Art. of War,  
100.

Duelling and attempting to commit suicide.

Arts. of War, 98,  
104, pp. 332, 333.

39. Every person subject to military law who—

(1.) Fights, or promotes, or is concerned in, or connives at a duel; or,  
(2.) Attempts to commit suicide,

shall be liable to suffer any punishment not exceeding imprisonment.

Arts. of War,  
98, 104.

Refusal to deliver to civil power officers and soldiers accused of civil offences.

Arts. of War, 96, 97,  
p. 331.

40. Every person subject to military law who—

(1.) On application being made to him for that purpose, neglects or refuses to deliver over to the civil magistrate, or to assist in the apprehension of officers or soldiers accused of crimes or offences punishable by ordinary law; or Art. of War, 96.

(2.) Protects any person from his creditors on the pretence of his being a soldier, or protects any soldier not actually doing duty as such in any manner not allowed by this Act, Art. of War, 97.

shall be liable to suffer any punishment not exceeding imprisonment.

Conduct to prejudice of discipline.

Art. 105, p. 334.

Naval Discipline Act, s. 43.

41. Every person subject to military law who—

Is guilty of disorder, neglect, or other conduct to the prejudice of good order and military discipline, although not in this Act specified, Art. of War, 105.

shall be liable to suffer any punishment not exceeding imprisonment.

*Offences punishable by ordinary law.*

Offences punishable by ordinary law.

Naval Discipline Act, 45.

Mutiny Act, 101,  
p. 136.

Arts. of War, 143,  
145, pp. 355-357.

42. Subject to the restrictions in this Act mentioned, every person subject to military law who is guilty of the offences in this section mentioned shall be liable to be punished as follows; that is to say,

(1.) If he is guilty of murder, to suffer death:

(2.) If he is guilty of manslaughter, to suffer any punishment not exceeding penal servitude:

(3.) If he is guilty of rape, to suffer any punishment not exceeding penal servitude:

Regulations as to trial of civil offences by court-martial.

See Mutiny Act,  
39, 76, pp. 59, 107.

43. The following restrictions shall be enacted in respect of the trial by court-martial of offences punishable by the civil judicature; that is to say,

(1.) A person subject to military law shall not be tried by court-martial for murder, manslaughter, or rape in the United Kingdom, or in any place within Her Majesty's dominions beyond the seas, if such place is within a distance of one hundred miles from the city or town which is the seat of any court of civil judicature established by the authority or appointment of the Crown and competent to try the offender:

(2.) Any person subject to military law when in Her Majesty's dominions may be tried by any competent court of civil judicature for any offence for which he would be triable if he were not subject to this Act:

(3.) Where a person subject to military law has been acquitted of any offence by any competent court of civil judicature, he shall not be liable to be tried in respect of that offence under this Act: Mutiny Act, 39.

(4.) Where a person subject to military law has been convicted of and punished for any offence by any competent court of civil judicature, he shall not be liable to be tried or punished for such offence under this Act, except as follows; that is to say, if an officer, he shall be liable to be tried by a general court-martial, and to suffer any punishment not exceeding cashiering; if a warrant officer, he shall be liable, by order of the Commander in Chief, to be reduced to an inferior class or to the ranks; if a non-commissioned officer, he shall be liable to be reduced to the ranks by order of the Commander in Chief or of the colonel of his regiment; if an army schoolmaster, he shall be liable, by order of the Commander in Chief, to be discharged from the service, or to lose the whole or any period of his previous service towards pension on discharge; if a soldier, he shall be liable to be discharged with ignominy from Her Majesty's service: Mutiny Act, 39.

(5.) Where

(5.) Where a person subject to military law has been sentenced by a court-martial to punishment for any offence, he shall not, during such time as he is suffering punishment in respect of that offence, be delivered up to any court of civil judicature:

Appendix, No. 1.

If any person so punished is afterwards tried by a court of civil judicature for the same offence, that court shall, in awarding punishment, have regard to the military punishment he may have already undergone.

#### *Redress of Wrongs.*

Art. of War,  
12.

**44.** If an officer thinks himself wronged by his commanding officer, and on due application made to him does not receive the redress to which he may consider himself entitled, he may complain to the Commander in Chief, who shall cause his complaint to be inquired into, and such directions to be given in the matter as may do justice to the officer complaining. In India any such officer may complain to the Commander in Chief in India, who shall cause his complaint to be inquired into, and thereupon report to the government of the presidency to which the officer belongs, in order to receive the further directions of such government.

Mode of complaint by officer.  
Art. 12, p. 299.  
Mutiny Act, 100, p. 136.

Mutiny Act,  
100.

**45.** If a soldier thinks himself wronged in any matter affecting his pay or clothing by his captain or other officer commanding the troop or company to which he belongs, he may complain thereof to the commanding officer of the regiment or corps, and such commanding officer is hereby required to summon a court of inquiry to investigate the matter for the purpose of determining whether such complaint is just; and the person complaining may, if he thinks himself aggrieved by the decision of the court of inquiry, appeal to a general court-martial; and such court shall hear and determine the merits of the appeal, and after determining the same, and after allowing the appellant to show cause to the contrary, by himself and by witnesses, if any, may either confirm the appeal or dismiss it, or may, if he thinks fit, pronounce such appeal groundless and vexatious, and may thereupon sentence such appellant to any punishment not exceeding imprisonment.

Mode of complaint by soldier.  
Art. 13, p. 299.

Art. of War,  
13.

#### *Punishments.*

**46.** Punishments may be inflicted in pursuance of sentences of courts-martial in Her Majesty's army:—

Scale of punishments by courts-martial.  
Mutiny Act, 822, pp. 26-41.  
Art. 125, p. 344.

Mutiny Act,  
8.

In the case of officers, according to the scale following:

Mutiny Act,  
8.

1. Death.

2. Penal servitude for a term not less than the minimum term for the time being allowed by law in the case of civil offenders in England.

Mutiny Act,  
8.

3. Imprisonment with or without hard labour for a term not exceeding two years.

Art. of War,  
125.

4. cashiering.

5. Dismissal from Her Majesty's service.

Art. of War,  
125.

6. Forfeiture of seniority of rank, either army or regimental.

Art. of War,  
125.

7. Reprimand, or severe reprimand.

In the case of soldiers, according to the scale following:

Mutiny Act,  
8.

1. Death.

Mutiny Act,  
8.

2. Penal servitude for a term not less than the minimum term for the time being allowed by law in the case of civil offenders in England.

Mutiny Act,  
8.

3. Imprisonment, with or without hard labour, for a term not exceeding two years.

4. Discharge with ignominy from Her Majesty's service.

5. Corporal punishment, subject as in this Act mentioned.

6. In the case of a non-commissioned officer, reduction to the ranks.

7. Forfeitures, fines, and stoppages.

Provided that—

(1.) A punishment higher in the scale shall be deemed greater than a punishment lower in the scale, and a punishment lower in the scale shall be deemed less than a punishment higher in the scale:

(2.) Where a punishment not exceeding imprisonment is mentioned in this Act in respect of an offence, there may be awarded for such offence imprisonment, or any one or more of the punishments lower in the scale in place of imprisonment.

(3.) An officer shall be deemed to be cashiered on being sentenced to penal servitude:

(4.) Any officer cashiered, and any soldier discharged with ignominy, shall be incapable of again serving Her Majesty in any capacity:

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(5.) A non-

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(5.) A non-commissioned officer, if sentenced to discharge with ignominy, or any greater punishment in pursuance of this Act, shall be deemed to be reduced to the ranks :

Mutiny Act, 22,  
p. 41.

(6.) Corporal punishment shall be inflicted only on soldiers while on active service against the enemy, or on board any ship on the high seas not in commission, and only for an offence punishable under this Act with imprisonment, or a greater punishment :

(7.) A sentence of corporal punishment shall not exceed 50 lashes, nor, if awarded by a regimental court-martial, exceed 25 lashes.

*Penal Forfeitures and Stoppages.*

Forfeiture of pay, service, and military decorations and rewards.  
Arts. 170-172, pp. 376, 377.

47. Forfeiture of service shall take place in manner for the time being directed by Act of Parliament. Forfeiture of any pay, good-conduct pay, good-conduct money, good-conduct service, or military decoration or reward, shall take place, either absolutely or in the discretion of a court-martial or competent military authority, in respect of such offences, and in such manner as may be directed by any warrant, regulation, or Article of War of Her Majesty for the time being in force. Art. of War, 170-173.

It shall be the duty of a court-martial, in passing sentence in respect of any offence for which a forfeiture is incurred, to make mention of any forfeiture so incurred ; nevertheless the sentence of a court-martial shall not be invalid by reason of the omission of such court to make mention in pursuance of this section of any forfeiture incurred.

Regulations as to stoppages.  
Art. of War 130, p. 347. Mutiny Act, 17, p. 33. Arts. of War, 130-132, pp. 347, 349.

48. In addition to or without any other punishment, any soldier may be sentenced by court-martial to make good by stoppages any actual loss or actual damage or destruction occasioned by or in respect of an offence against this Act.

The amount of any loss, destruction, damage, or expense shall be ascertained by evidence, and determined by the court-martial or other military authority sentencing the offender, except in the case of the loss, destruction, or damage of any arms, accoutrements, clothing, or necessaries.

Restriction on stoppages.

48A. Where a soldier is placed under stoppages, in pursuance of one or more of the provisions of this Act, so much only of his pay shall be stopped as, after satisfying the charges for messing and washing, will leave him a residue of not less than 1 *d.* per day.

*Jurisdiction.*

Jurisdiction in respect of offences committed by troops on board Her Majesty's ships.  
Art. of War, 191, p. 384.  
Naval Discipline Act, s. 88.

49. All persons subject to military law when embarked on board any of Her Majesty's ships of war or on board any other ships regularly commissioned by Her Majesty, and employed in the transport of troops, shall conform themselves to the laws established for the discipline of the ship, and shall consider themselves under the command of the senior officer of the ship in which they are embarked, as well as of the superior officer of the Fleet (if any) to which such ship belongs. Art. of War, 291.

Jurisdiction in respect of place of commission of offence.  
Mutiny Act, 7, p. 26.

50. All offences under this Act committed by any person subject to military law wherever committed, within or without Her Majesty's dominions, may, for the purpose of trial and punishment, be deemed to have been committed in any place where the person charged with the offence may for the time being happen to be. Mutiny Act, 7.

Limitation of time for trial of offences.  
Mutiny Act, 97, p. 130.

51. A person shall not be liable to be tried or punished by court-martial for any offence against this Act which appears to have been committed more than three years before the date of the warrant for such trial, unless the person accused, by reason of his having absented himself, or of some other manifest impediment, has not been amenable to justice within that period, in which case such person shall be liable to be tried at any time not exceeding two years after the impediment has ceased. Mutiny Act, 97.

## PART II.

## ADMINISTRATION OF MILITARY LAW.

*Arrest.*

Custody of persons charged with offences.

52. The following regulations shall be enacted with respect to persons subject to military law when charged with offences punishable under this Act : Art. of War, 18.

(1.) Every person subject to military law when so charged may be taken into military custody ;

(2.) Military custody shall, in the case of an officer, mean the putting him under arrest, and in the case of a non-commissioned officer, the putting him under arrest or the putting him in confinement, and in the case of a soldier, the putting him in confinement : Art. of War, 18.

(3.) Any

Arts. of War, 15, 18, 19, pp. 302, 303.

Art. of War,  
15.

(3.) Any officer may order into military custody any officer of inferior rank or any soldier, and any non-commissioned officer may order into military custody any soldier:

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Art. of War,  
16.

(4.) An officer may order into military custody any officer (though he be of superior rank) engaged in a quarrel, fray, or disorder, and shall forthwith make his superior officer acquainted therewith:

(5.) Officers may be ordered into custody by officers, and soldiers may be ordered into custody by officers or non-commissioned officers, notwithstanding the person giving the order and the person in respect of whom the order is given do not belong to the same regiment:

Art. of War,  
19.

(6.) An officer or non-commissioned officer commanding a guard or a provost-marshal shall not refuse to receive or keep any person subject to military law who is committed to his custody by any officer, or non-commissioned officer, but it shall be the duty of the officer, or non-commissioned officer, who commits any person into custody at the time of such committal, or without unnecessary delay, to deliver to the officer, non-commissioned officer, or provost-marshal, into whose custody the person is committed, an account in writing, signed by himself, of the crime with which the person so committed is charged:

(7.) The charge made against every person taken into military custody shall be forthwith investigated by his commanding officer, and he shall within a reasonable time either be brought to trial or be discharged from custody.

#### *Court of Inquiry.*

53. If any soldier has been illegally absent from his duty for a period of 21 days a court of inquiry of three officers shall forthwith assemble, who are hereby empowered to examine witnesses on oath respecting the fact of such absence, and the deficiency, if any, in the articles of his kit; and, having received proof on oath of the facts, they shall declare such absence and the period thereof, and the deficiency, if any, in the articles of his kit, and shall further declare whether in their opinion the soldier has deserted or is absent without leave, and the officer commanding the regiment or corps to which the absent soldier belongs shall enter a record of the declaration of such court of inquiry in the books of the regiment.

Court of inquiry on  
illegal absence of  
soldier.

Art. of War, 167,  
p. 373.

If the absent soldier does not afterwards surrender or is not apprehended, such record shall have the legal effect of a conviction for desertion or absence without leave as the case may be; but if such soldier surrenders or is apprehended after such record has been so entered, such record, or a copy thereof, purporting to bear the signature of the officer having the custody of the books of the regiment, shall, on the trial of such soldier on any charge or charges arising out of such absence or deficiency, be admissible in evidence of the facts therein recorded.

#### *Courts-Martial.*

54. The following regulations shall be made with respect to the constitution and jurisdiction of regimental courts-martial:

Regulations as to  
regimental courts-  
martial.

(1.) A regimental court-martial may be convened by any commanding officer not under the rank of captain, whether commanding the regiment or any part thereof detached from head-quarters:

Arts. 112-114, 129,  
pp. 337, 338, 347.  
Mutiny Act, 10,  
p. 27.

(2.) A regimental court-martial shall consist of not less than five officers, unless it is certified on the face of the proceedings by the convening officer that it is impracticable, with due regard to the public service, to assemble that number, in which case three shall be sufficient:

(3.) The convening officer shall not be a member of a regimental court-martial, but shall appoint the president thereof:

Arts. 112, 114,  
pp. 337, 338.

(4.) The president shall not be under the rank of captain unless where a court-martial is held on the line of march, or on board any ship not in commission on the high seas, or unless the convening officer certifies on the face of the proceedings that it is impracticable, with due regard to the public service that a captain should preside, in any of which cases the senior officer of any rank may convene the court, and the president may be of whatever rank may be available:

(5.) Subject as in this Act mentioned, a regimental court-martial shall not try any officer, or any offence by this Act made punishable with death or penal servitude; and (save with the permission of the officer commanding the brigade, district, or garrison) shall not try absence without leave exceeding 21 days, and it shall not award any greater punishment than imprisonment, nor imprisonment for more than 42 days; but, subject as aforesaid, and subject to the provisions of this Act relating to the jurisdiction of the commanding officer, and to the jurisdiction of civil courts and civil magistrates, any offence under this Act committed by a soldier belonging to the regiment may be tried and punished by a regimental court-martial:

(6.) When any officers or soldiers of a regiment are attached for duty to another regiment, the officers and soldiers so attached, and the officers and soldiers of

## Appendix, No. 1.

of the regiment to which they are attached, shall be deemed to be officers and soldiers of one and the same regiment, for the purposes of regimental courts-martial :

(7.) The officers and soldiers of a brigade or regimental dépôt shall be deemed to be officers and soldiers of one and the same regiment for the purposes of regimental courts-martial.

Detachment courts-martial.  
Art. 113, p. 338.

55. The commissioned officers of any detachment or portion of troops which may at any time be serving in any part of the United Kingdom or elsewhere, or may be embarked on board any ship not in commission (although such detachment or portion of troops consists of men in a dépôt or from different regiments or corps), may, by the appointment of the senior officer in command of the detachment, district, station, garrison, barrack, island, or colony, provided he be not under the rank of captain, or in case such troops are on board any ship not in commission, by the appointment of the senior officer on board (whatever be his rank), without any other authority than this Act, hold detachment courts-martial, consisting of not less than five officers (unless it be found impracticable to assemble that number, when three shall be sufficient); and may exercise any jurisdiction which a regimental court-martial may exercise under this Act.

Courts-martial on line of march or in troop ships, &c.  
Mutiny Act, 11, p. 28.  
Art. of War, 114, p. 339.

56. Where the offence of mutiny or of insubordination accompanied with personal violence, or any other offence is committed on the line of march, or on board any ship not in commission, the offender may be tried by a regimental or detachment court-martial, and the sentence may be confirmed and carried into execution on the spot by the officer in the immediate command of the troops, provided that the sentence does not exceed that which a regimental court-martial is competent to award.

Regulations as to district and general courts-martial.  
Mutiny Act, 6-11, p. 25-28.

57. The following regulations shall be made with respect to the constitution and jurisdiction of district and general courts-martial; that is to say,—

(1.) Her Majesty may from time to time grant commissions under the Royal sign-manual for the holding of district or general courts-martial within the United Kingdom :

(2.) Her Majesty may from time to time grant to any officer not below the degree of a field officer commanding Her Majesty's forces, or any portion thereof, either within or without the United Kingdom, a warrant to convene district or general courts-martial, and to authorise any officer under his command not below the degree of field officer to convene the same : Provided that in places beyond seas, where a field officer is not in command, a captain may be authorised to convene such courts-martial :

(3.) A district or general court-martial may be convened by any officer to whom such warrant is granted, or who is authorised for the purpose in pursuance of any such warrant, but not otherwise :

Mutiny Act, 9, p. 27.

(4.) A district court-martial, if convened in the United Kingdom, shall consist of not less than seven; if convened elsewhere within or without Her Majesty's dominions, of not less than the prescribed number of officers :

(5.) A general court-martial, if convened in the United Kingdom, shall consist of not less than nine, if convened elsewhere within or without Her Majesty's dominions, of not less than the prescribed number of officers :

Art. 109, p. 336.

(6.) An officer shall not be qualified to be a member of a district court-martial unless he is qualified in the prescribed manner, and an officer shall not be qualified to be a member of a general court-martial unless he has held his commission during the three years preceding the day of the assembly of the court :

Art. 106, p. 335.

(7.) An officer under the rank of captain shall not be qualified to be a member of a court-martial for the trial of a field officer :

Naval Discipline Act, s. 8.  
Art. of War, 159, p. 367.

(8.) A prosecutor or witness for the prosecution shall not sit on any court-martial for the trial of any prisoner whom he prosecutes, or against whom he is witness, nor shall he act as judge advocate :

Art. 114, p. 339.

(9.) The president of a district or general court-martial shall be appointed by the officer convening the court, but he shall not, except as is otherwise provided by this Act, be the officer who convenes, or whose duty it is to confirm the sentence of the court, or who investigated the charges on which the prisoner is arraigned, or the captain of the company to which the prisoner belongs, and he shall not be under the rank of a field officer, when practicable, and in no case under the rank of captain :

(10.) If the court during the trial is by death or otherwise reduced below the prescribed number, it shall be dissolved, but the prisoner may be tried again :

(11.) If on account of the illness of the prisoner before the finding it is impossible to continue the trial, the court may be adjourned or dissolved, but if dissolved the prisoner may be tried again :

(12.) In

(12.) In the case of an equality of votes the prisoner shall be deemed to be acquitted: Appendix, No. 1.

(13.) A district court-martial shall not try an officer, nor award the punishment of death or penal servitude; but, subject as aforesaid, and to the jurisdiction of civil courts and civil magistrates, any offence under this Act may be tried and punished by either a district or general court-martial. Mutiny Act, 9, p. 27.  
Art. 117, p. 340.

58. Any officer not under the rank of captain commanding any detachment or portion of Her Majesty's troops serving in the field in any place beyond seas in which it is found impracticable to assemble a general court-martial may, on complaint to him of any offence committed against the property or person of any inhabitant of or resident in such place, by any officer or soldier under his immediate command, assemble a court-martial, to be termed a field court-martial, and such court may exercise any jurisdiction which a general court-martial might exercise. Field court-martial.  
Mutiny Act, 12, p. 28.  
Art. of War 107, p. 335.

The provisions of this Act with respect to general courts-martial shall, so far as the same are applicable, apply to field courts-martial, with the following exceptions:

A field court-martial may be convened without any warrant in pursuance of this Act empowering the officer who assembles the same to convene courts-martial:

A field-court martial may consist of any number of officers not less than three:

The president of a field court-martial may be the person convening the same.

59. A court-martial held in pursuance of this Act shall assemble at such time and place as the officer convening the same may direct, and shall sit from day to day, with the exception of Sundays, until sentence is given: Provided that where the president of any court-martial considers that it would be for the advantage of Her Majesty's service to dispense with this provision, such court-martial may sit on a Sunday, or may be adjourned for any period not exceeding days. Time of sitting.  
Naval Discipline Act, s. 60.

Any member of a court-martial shall not absent himself unless compelled so to do by sickness or other just cause, and if any member of a court-martial absents himself therefrom, in contravention of this section, he shall be liable to suffer any punishment not exceeding cashiering.

60. A prisoner on trial by court-martial may object, for any reasonable cause, to the president or any officer appointed to serve thereon, either originally or to fill a vacancy caused by the retirement of an officer objected to, so that the court may be constituted of officers to whom the prisoner makes no reasonable objection. Challenges by prisoner.  
Art. of War, 152, p. 362.

Every objection made by a prisoner to any officer shall be submitted to the other officers appointed to form the court. If it is disallowed, the trial shall proceed as if no objection had been made; if it is allowed, the officer objected to shall retire. If the said retirement of any officer or officers does not reduce the number of officers of the court below the prescribed number, the trial may proceed, but if it does so reduce the same, the convening officer shall appoint an officer or officers to serve in lieu of the officer or officers so retiring, subject to the right of the prisoner to object as before-mentioned, and the court shall, if necessary, adjourn for the purpose of such appointment.

In order to enable a prisoner to avail himself of his privilege of objecting to any officer, the names of the officers appointed to form the court shall be read over in the hearing of the prisoner on their first assembling, and he shall be asked whether he objects to any of such officers, and a like question shall be repeated in respect of any officer appointed to serve in lieu of a retiring officer.

#### *Proceedings of Courts-Martial.*

61. An oath in the prescribed form or forms shall be administered by the prescribed person to every member of a court-martial, and to the Judge Advocate, or person officiating as Judge Advocate (if any), and also to every officer in attendance on any court-martial for the purpose of instruction, and also to every shorthand writer (if any). Oaths to be administered.  
Art. 152, p. 362.  
Mutiny Act, 13, p. 29.

62. The following provisions shall have effect with respect to witnesses before a court-martial: Regulations as to witnesses.

(1.) Every person required to give evidence before a court-martial shall be summoned by writing under the hand of the officer prescribed by the Articles of War; and, Mutiny Act, 13, p. 29.  
Art. 163, p. 364.

(2.) Every person summoned and attending as a witness before any court-martial shall, during his necessary attendance in or on such court, and in going to and returning from the same, have the same privileges from arrest as he would have if he were a witness before a superior court of civil jurisdiction and,

## Appendix, No. 1.

See 32 & 38 Vict.  
c. 68.

(3.) Every witness before a court-martial shall be examined on oath, which the president or other member of the court may administer in the prescribed manner: Provided that—

(a.) If a witness objects to take an oath, or is objected to as incompetent to take an oath, the court if satisfied of the sincerity of the objection by the witness, or where the witness is objected to, of the oath having no binding effect on the conscience of the witness, shall permit such witness instead of being sworn to make a solemn declaration in the prescribed form:

(4.) If a person being duly summoned as a witness before a court-martial makes default in attending, or refuses to take an oath or declaration, or to answer all such questions as the court may legally demand, he shall, if a person subject to military law, be liable to any punishment not exceeding imprisonment, and if he is not so subject, and the reasonable expenses of his attendance have been paid or tendered to him, the president of the court-martial may certify the default or refusal of such person, under his hand, to any court of law having power to punish witnesses for non-attendance when summoned before such court within whose jurisdiction the said person may be, and such court may thereupon, if it seem just, punish such witness in like manner as if such witness had made such default or refusal in any proceeding in such court.

Regulations as to  
evidence.

Mutiny Act, 100,  
p. 136.  
Mutiny Act, 48,  
p. 68.  
Mutiny Act, 48,  
p. 68.

Art. of War, 46,  
p. 310.  
Mutiny Act, 34,  
p. 54.

Art. of War, 46,  
p. 310.

Mutiny Act, 107,  
p. 144.

Art. of War, 155.  
p. 365.

Penalty on person  
giving false evi-  
dence.

Naval Discipline  
Act, 67.  
Mutiny Act, 96,  
p. 129.  
Art. of War, 35,  
p. 306.

Provision in case of  
insane persons.  
Naval Discipline  
Act, 68.

Power to clear  
court.  
Art. of War, 162,  
p. 368.  
Power in India to  
suspend proceedings.  
Mutiny Act, 100,  
p. 136.

63. The following enactments shall be made with respect to evidence before courts-martial; that is to say,

(a.) The declaration purporting to be made by any person upon his attestation or enrolment in any branch of Her Majesty's service shall be evidence of such person having represented the several particulars as stated in such declaration:

(b.) A letter purporting to be signed by or on behalf of the Secretary of State for War, the Commissioners of the Admiralty, or the commanding officer of any regiment or any of Her Majesty's ships, respecting the service or discharge of any person, shall be evidence of such service or discharge:

(c.) A descriptive return purporting to be signed by any justice of the peace or officer of Her Majesty's army in respect of the apprehension or surrender or detention of a person accused of desertion or absence without leave shall be evidence of the facts stated therein:

(d.) A record made in one of the regimental books in pursuance of the regulations of Her Majesty, purporting to be signed by the commanding officer of the regiment, or by the officer required by the said regulations to make such record, shall be evidence of the facts stated by such record:

(e.) A copy of any record in one of the said regimental books purporting to be certified to be a true copy by the officer having the custody of such book shall be evidence of such record:

(f.) Evidence of the delivery at the then last registered place of abode of a man enrolled in the Army Reserve of a notice issued by the military authorities, or of the delivery of a letter containing such notice addressed to the said place of abode, shall be evidence that such notice or letter was brought to the knowledge of such man:

(g.) An entry, or a verified extract thereof, of a conviction by a court-martial or by a civil court in the court-martial book or defaulters' book shall be evidence of such conviction.

64. Every person who, on any examination on oath or on affirmation in pursuance of this Act, wilfully gives false evidence shall—

(1) If he is not subject to military law, be guilty of the offence of perjury, or of the offence by whatever name called in the part of Her Majesty's dominions in which the offence was committed, which, if committed in England, would be perjury, and shall be liable to be convicted and punished for such offence; and,

(2.) If he is a person subject to military law, shall be liable to any punishment not exceeding imprisonment.

65. Where it appears on the trial by court-martial of any person charged with an offence that such person is insane, the court shall find specially the fact of his insanity, and the confirming officer shall order such person to be kept in strict custody, in such place and in such manner as the court deems fit, until the directions of Her Majesty thereon are known; and Her Majesty may give orders for the safe custody of such person during her pleasure, in such place and in such manner as Her Majesty thinks fit.

66. The president of any court-martial may, on any deliberation amongst the members, cause the court to be cleared of all other persons.

67. The government of any presidency in India may suspend the proceedings of any court-martial held in India on any officer or soldier belonging to Her Majesty's forces within such presidency.

68. Any



**68.** Any person who is intentionally guilty of any contempt towards any court-martial, by using insolent or threatening language, or by causing any interruption or disturbance in its proceedings, may—

Appendix, No. 1.  
Contempt of court.  
Art. 101, p. 368.

(1.) If he is subject to military law, be sentenced by such court to imprisonment, or may be tried by any other court-martial for the offence, and be sentenced to imprisonment, so that in either case the imprisonment do not exceed six months, or any less period for which the court has power to award imprisonment; and,

(2.) If he is not subject to military law, he may, on certificate under the hand of the president of the court-martial of his having been guilty of contempt, be punished by any court in Her Majesty's dominions where the offence is committed having power to commit for contempt, in the same manner as if he had been guilty of contempt of such court.

**69.** When in the opinion of the court-martial convened to try a person on a charge for any offence the offence is insufficiently or inaccurately described, such court-martial may, at any time before their finding, amend the charge in such manner as seems to them necessary to properly describe the offence: Provided that—

Amendment of charge.

(1.) The court shall not make any amendment which in their opinion would prejudice the accused in his defence; and,

(2.) After such amendment the accused may recall and examine or cross-examine any witnesses as if such witnesses were then called for the first time to give evidence on the trial, and also may call any other witnesses.

**70.** Any prisoner charged before a court-martial with stealing, may be found guilty of embezzlement, or fraudulently misappropriating or concealing money or property.

Prisoner may be found guilty in certain cases of offence other than charged.  
Naval Discipline Act, s. 48.

Any prisoner charged before a court-martial with embezzlement, may be found guilty of stealing, or fraudulently misappropriating or concealing money or property.

Any prisoner charged before a court-martial with desertion, may be found guilty of attempting to desert, or of being absent without leave.

Any prisoner charged before a court-martial with any other offence under this Act may, on failure of proof of the full offence, be found guilty of another offence of the same class not involving a greater degree of punishment.

**71.** An officer or soldier who is acquitted or convicted of any offence by any court-martial, shall not be liable to be tried a second time by the same or any other court-martial for the same offence.

No second trial for same offence.  
Mutiny Act, 14, p. 31.

**72.** The proceedings of all district and general courts-martial shall be preserved in the Judge Advocate General's office in London, but the proceedings of a district court-martial need not be preserved for more than three years from the day of their being received in such office.

Record and amendment of proceedings of courts-martial.  
Art of War, 157, p. 366.

If it appears by a certificate under the hands of a majority of the court-martial, that the written proceedings thereof do not correspond with the proceedings of the court as they in fact took place, the Judge Advocate General may, if he deem just, amend the written proceedings in accordance with such certificate.

#### *Sentences of Courts-martial.*

**73.** The following regulations shall be made with respect to the sentences of courts-martial:

Regulations as to confirmation and requisites of sentences of courts-martial.

(1.) The proceedings of a court-martial shall not be of any validity until they have been confirmed by the confirming officer. The confirming officer is—

(a.) In the case of a regimental court-martial, the commanding officer:

Art. of War, 129, p. 347.

(b.) In the case of a district court-martial, the officer in command of the district:

Art. of War, 127, p. 345.

(c.) In the case of a general court-martial, if such court sat in the United Kingdom, Her Majesty, and if such court sat elsewhere, the officer authorised by the warrant to confirm the same:

Art. 123, p. 343.

(d.) In the case of a detachment court-martial, the commanding officer, not being a member of the court:

Art. 129, p. 347.

(e.) In the case of a field court-martial, the general commanding the army of which the detachment forms part:

Art. 124, p. 343.

(2.) Judgment of death shall not be passed on any prisoner without the concurrence of two-thirds at the least of the officers serving on the court-martial by which he is tried:

Mutiny Act, 8, p. 26.

(3.) A sentence of death passed by a court-martial shall not be executed in any of Her Majesty's colonies unless, in addition to the confirmation otherwise required by this Act, it is approved by the governor of the colony. In India a sentence of death shall be approved by who for the purposes of this section shall be deemed to be the governor of the colony:

Art. 123, p. 343.

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(4.) Any



## Appendix, No. 1.

See Mutiny Act, 16,  
20, 24, 25, pp. 33,  
40, 42, 48, Arts.  
120, 141-5, pp. 342,  
354-7.

Mutiny Act, 14,  
p. 31.

(4.) Any authority having power to confirm the sentence of a court-martial may commute the punishment awarded by such sentence for any less punishment, or may remit the whole or any part of the punishment, or remit the whole or any part of such sentence, and any such authority may commute corporal punishment for imprisonment for any period not exceeding forty-two days :

(5.) A finding, opinion, or sentence given by any court-martial, and signed by the president thereof, shall not be revised more than once, nor shall any additional evidence in respect of any charge on which the prisoner then stands arraigned be received by the court on any revision :

(6.) When a prisoner is found guilty of several charges for several offences and sentenced thereon, such sentence shall not be invalid by reason of the finding on one or more of the charges being invalid, but the confirming authority shall determine whether the punishment is to be diminished in consequence thereof.

Execution of capital  
sentence.

74. Sentence of death shall be carried into effect in manner provided by the custom of war.

Execution of  
sentences of penal  
servitude.

75. The following regulations shall be made with respect to carrying into effect sentences of penal servitude passed by court-martial on persons subject to military law, or with respect to sentences of death on such persons commuted to penal servitude ; that is to say :

Mutiny Act, s. 18.

*As to Sentences passed in the United Kingdom.*

(1.) When the offender is sentenced in the United Kingdom to penal servitude, his sentence, with the confirmation thereof, shall be notified in writing by the Commander in Chief or by the Adjutant General, or by the Secretary of State, to some judge of the High Court of Justice in England, or of the High Court of Justice in Ireland, or of the Court of Session in Scotland :

Mutiny Act, s. 18.

(2.) On receipt of such notice the judge to whom it is given (or some other judge of the same court) shall make an order for the penal servitude of the offender, and, if necessary, for his intermediate custody.

Mutiny Act, s. 18.

(3.) An offender sentenced in the United Kingdom to penal servitude, shall, when delivered over to civil custody to undergo his sentence, be dealt with in all respects in the same manner, and be in the same position as if he had been sentenced by a competent civil court in the United Kingdom for the term of penal servitude for which he has been sentenced by court-martial.

Mutiny Act, s. 18.

(4.) The order of a judge made in the United Kingdom for the penal servitude of an offender, shall be filed and kept of record by such officer of the High Court of Justice in England as may be directed by any rule of that court for the time being to file and keep the same of record ; and a certificate under the hand of the said officer, stating the name of any offender named in such order, with his offence, the place of his conviction, and the conditions on which the said order was made, shall be evidence of the conviction and sentence of the offender, and of the conditions on which such order was made.

Mutiny Act, s. 18.

(5.) The said officer shall give such certificate to any applicant on payment of a fee for each certificate not exceeding two shillings and sixpence.

*As to Sentences passed in India and the Colonies.*

Mutiny Act, s. 18.

(6.) When an offender is sentenced in Her Majesty's dominions in India or in any colony to penal servitude, his sentence, when confirmed, shall be notified as follows :

(a.) In Her Majesty's dominions in India by the officer commanding Her Majesty's forces at the presidency or station where the court-martial was held, or, in his absence, by the Adjutant General for the time being, to some judge of the chief civil court having jurisdiction in the place where the court-martial was held, or where the prisoner may be in custody :

(b.) In any colony by the officer commanding Her Majesty's forces within the district within which the court-martial was held, to some judge of the chief civil court having jurisdiction in the place where the court-martial was held.

(7.) On receipt of such notice the judge to whom it is given (or some other judge of the same court) shall make an order for the penal servitude of the offender for the term specified in the notice, in accordance with the terms of the notice, and, if necessary, for his intermediate custody, until he is delivered over to the civil power for the purpose of undergoing his term of penal servitude.

(8.) The order of the judge, if made in Her Majesty's dominions in India, shall be forwarded by the judge who makes the same to the governor of the presidency within which the offender was sentenced, and if made in any colony, shall be forwarded in like manner to the governor of such possession.

(9.) The

(9.) The governor, on the receipt of the order of the judge, shall declare, by endorsement or otherwise, on the order the presidency or colony or place within which the offender is to undergo the whole or any portion of his imprisonment, in obedience to any directions in relation to convicts or penal servitude which may from time to time be transmitted from Her Majesty through the Secretary of State to such presidency or colony.

Appendix, No. 1.

Mutiny Act, s. 19.

(10.) The offender shall, according to the directions, undergo the sentence of penal servitude given by the governor of the presidency or colony, either in the presidency or colony in which he has been so sentenced, or in the colony or place to which he has been so removed or sent, and whilst such sentence remains in force shall be liable to be imprisoned, and kept to hard labour, and otherwise dealt with under such sentence, in the same manner as if he had been sentenced to be imprisoned, with hard labour, during the term of his penal servitude, by the judgment of a court of competent jurisdiction in such presidency or colony, or in the colony or place to which he has been so removed or sent respectively. If the offender is removed to any part of the United Kingdom for the purpose of undergoing any part of his term of penal servitude, he shall be dealt with in all respects in the same manner, and be in the same position as if he had been sentenced by a competent civil court in the United Kingdom to the term of penal servitude which he has to undergo.

(11.) An offender sentenced in India or the colonies to penal servitude may be kept in military custody during all or any part of his sentence, and may be removed in military custody at any time from place to place as circumstances may require.

(12.) An order, purporting to be an order of a judge made in pursuance of this section, directing an offender to be kept in penal servitude, accompanied by a notification from the governor of the presidency or colony of the place where such offender is for the time being to undergo penal servitude, shall be sufficient evidence of the matters stated in such order.

*As to Sentences of Penal Servitude out of Her Majesty's Dominions.*

(13.) In any place out of Her Majesty's dominions the officer in command of Her Majesty's forces at such place shall have power to make an order in writing for the penal servitude and intermediate custody of any offender sentenced to penal servitude; and such offender shall be liable, by virtue of such order, to be imprisoned and kept to hard labour, or otherwise dealt with under the sentence of the court, in the same manner as if he had been sentenced to be imprisoned with hard labour during the term of his penal servitude in the place where he may be ordered to be kept in such intermediate custody, or in the place to which he may be removed for the purpose of undergoing his sentence of penal servitude.

*General Provisions.*

(14.) If any offender be brought to any place in the United Kingdom, there to undergo any sentence of penal servitude which has been passed upon him by a court-martial held elsewhere, and the order for his penal servitude and intermediate custody be not forthcoming, and the Judge Advocate General, on application for that purpose, certifies that it appears from the original proceedings of the court-martial whereby the offender was tried that he has been duly sentenced to penal servitude, and that, for anything that appears to the contrary, such sentence is still in force against the said offender for the period to be stated in such certificate, the offender shall, on an order to that effect under the hand of one of Her Majesty's Principal Secretaries of State, be removed to some convict prison, and shall be imprisoned and kept to hard labour, and be otherwise dealt with, during the term of his sentence, as if he had been sentenced to a like term of penal servitude by a competent court in the United Kingdom.

(15.) Any sentence of penal servitude awarded by a court-martial shall, unless otherwise expressed, be deemed to commence on the day on which such sentence was signed by the president of the court.

**76.** The following enactments shall be made with respect to carrying into effect sentences of imprisonment passed by military authority on persons subject to military law:

Regulations with respect to imprisonment.

(1.) The prisoner may, by the order of a competent authority, be kept in military custody during all or any part of his term of imprisonment.

Mutiny Act, 25, 26, 27, 29.

(2.) The prisoner may, by the order of a competent authority, if his sentence of imprisonment was passed in the United Kingdom, be imprisoned in any public prison in the United Kingdom during all or any part of his term of imprisonment.

Mutiny Act, 25, 26, 27, 29.

(3.) The prisoner may, by the order of a competent authority, if his sentence was passed in any place out of the United Kingdom, be imprisoned in any prison in Her Majesty's dominions, or in any prison out of such dominions the authorities of which may be willing to receive such prisoner.

Mutiny Act, 25, 26, 27, 29.

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Appendix, No. 1.

Mutiny Act, 25, 26,  
27, 29.

Mutiny Act, s. 30.

Mutiny Act, s. 30.

Mutiny Act, 31.

(4.) Every governor of a prison in any part of Her Majesty's dominions shall receive into his custody any military prisoner under sentence of imprisonment, on delivery to him of an order of a competent authority.

(5.) The order of a competent authority for the imprisonment of a prisoner in a prison means in this section an order in writing of the general commanding in chief, or the adjutant general, or the officer confirming the proceedings of the court which sentenced the prisoner to imprisonment, or the officer commanding the regiment to which the prisoner belongs or is attached.

(6.) The order shall specify the offence of which the prisoner has been convicted, and the sentence of the court, and the period of imprisonment which he is to undergo, and the day and hour on which he is to be released.

(7.) A prisoner may, by order of a competent authority, be discharged from prison or be delivered over to military custody, whether for the purpose of being removed to some other prison, or for the purpose of being brought before a court-martial, either as a witness or for trial.

(8.) The order of a competent authority for the discharge of a prisoner, or for his delivery over to military custody as last aforesaid, means in this section as follows; that is to say,

(a.) In the case of a prisoner undergoing imprisonment in the United Kingdom, by the general commanding in chief, or the adjutant general, or the officer who confirmed the proceedings of the court, or the officer commanding the district or garrison in which such prisoner may be :

(b.) In the case of a prisoner undergoing imprisonment in any part of Her Majesty's dominions in India, by the Commander in Chief in India, or in any presidency in India by the general commanding in chief in such presidency :

(c.) In the case of a prisoner undergoing imprisonment in any part of Her Majesty's dominions other than the United Kingdom and India, by the general commanding in chief or the adjutant general :

(d.) In the case of a prisoner undergoing imprisonment in any place out of Her Majesty's dominions, by the officer commanding in chief at such station, or by the officer who confirmed the proceedings of the court.

(9.) Where the prisoner is intended to be discharged, the order shall direct his discharge, and he shall be discharged accordingly. Where the prisoner is delivered over to military custody, a further order shall be given addressed to the officer who is to receive him into military custody, and directing him to receive such prisoner into his custody, and specifying how he is to deal with the prisoner while in his custody, whether to detain him in confinement for a specified time, or to remove him to a specified prison, or to bring him to a specified place for the purpose of being brought before a court-martial either as witness or for trial, or otherwise as circumstances may require.

(10.) Where the prisoner is intended to be removed to some other prison, a further order shall be given directing the governor of such other prison to receive such prisoner into his custody, and specifying the offence for which such prisoner has been convicted, and the sentence of the court, and the period of imprisonment which he is to undergo, and the day and the hour on which he is to be released.

(11.) Where a prisoner is in prison by order of the officer commanding his regiment, the order shall be signed by that officer, and shall specify the time, not exceeding seven days, during which the prisoner is to be detained.

(12.) Every governor of a prison to whom any order under this section for the imprisonment of a prisoner is delivered, shall keep such prisoner in a proper place of confinement with or without hard labour, according to the sentence of the court, and during the time specified in the said order, or until he is duly discharged or delivered over to other custody before the expiration of that time under an order duly made for the purpose.

(13.) Any time during which any prisoner under sentence of imprisonment is detained in military custody, shall be reckoned as imprisonment under the sentence.

(14.) A prisoner may, during the time of his imprisonment, when on board ship, or otherwise, be subjected to such restraint as is necessary for his detention and removal.

Regulations as to  
prisons.

77. The following regulations shall be made with respect to prisons, the prisoners in which are not maintained out of moneys provided by Parliament :

(1.) The governor shall supply every soldier imprisoned therein with diet and other necessaries according to the prison regulations, and shall receive on account of every soldier, out of the pay of such soldier, during the period of his imprisonment, sixpence per diem :

(2.) Where a soldier is sentenced to be discharged from the army on the completion of his term of imprisonment, the Secretary of State may cause to be issued out of

of Army Votes, on application in writing, signed by any justice within whose jurisdiction such prison is situated, together with a copy of the order of commitment, a further sum not exceeding sixpence per diem, and the said sum of one shilling, or of sixpence, and the further sum, if any, shall be carried to the credit of the fund from which the expenses of such prison are defrayed:

(3.) A sentence of imprisonment passed by either by a court-martial or by any court of criminal jurisdiction on any officer or soldier shall be in no respect affected by such person ceasing to be an officer or soldier by discharge or otherwise at any time: Provided that for each person so ceasing to be an officer or soldier, the Secretary of State may cause to be issued out of Army Votes, on application in writing, signed by any justice as aforesaid, together with a copy of the order of commitment, a sum not exceeding one shilling and sixpence per diem, which said sum shall be carried to the credit of the fund from which the expenses of such place of confinement are defrayed.

In India, the expenses incurred under the provisions of this section shall be paid in the same manner as the other expenses of such prison, or as may be provided by the laws or regulations to be made in that behalf.

78. Every governor of any prison who has reason to know or believe that any person in his custody for any offence, civil or military, is a soldier liable to serve Her Majesty on the expiration of his imprisonment, shall as soon as may be, give, if in Great Britain to the Secretary of State, and if in Ireland to the general commanding Her Majesty's forces in Ireland, and if in India to the adjutant general of the army, or to the nearest military authority with whom it may be convenient to communicate, notice of the day and hour on which the imprisonment of such person will expire; and shall use his best endeavours to ascertain and report in all cases where practicable the particular regiment to which such person belongs, and also whether he belongs to the dépôt or the head quarters of his regiment; and in the event of his being a recruit who has not joined, shall report to that effect, and shall state the name of the place where he enlisted.

Expiration of imprisonment of soldiers.  
Mutiny Act, 38, p. 52.

In all cases where the soldier in custody is under sentence to be discharged from the service on the completion of his term of imprisonment, and the discharge document is in the hands of the governor of the prison, such governor shall not be required to make any report thereof to the Secretary of State, or to the military authorities in this section referred to.

79. Any governor of any prison who refuses to receive and to confine, or to discharge or deliver over, any offender in the manner in this Act directed, shall forfeit for every such offence the sum of one hundred pounds.

Penalty on keepers of prisons for refusing to confine, &c., military offenders.  
Mutiny Act, 84, p. 113.

#### *Provost Marshal.*

80. For the prompt and instant repression of all irregularities and crimes abroad which may be committed by persons subject to military law in the field and on the line of march, provost marshals shall be appointed by Her Majesty, or by the Commander in Chief, or general commanding in the field, and their powers shall be regulated according to the established usages of war and rules of Her Majesty's service, being limited to the punishment of offenders whom they may detect in the actual commission of any crime; the general commanding in the field will cause them to exercise the powers entrusted to them in such manner and under such circumstances as he may consider best calculated to prevent and instantly to repress crimes injurious to the discipline of Her Majesty's army and the public service; their duties are to take charge of prisoners confined for offences of a general description, to preserve good order and discipline, to prevent breaches of both, by soldiers and followers of the army, and to punish on the spot or the same day, those whom they may find in the immediate act of committing breaches of good order and military discipline; provided that the punishment be limited to the necessity of the case, and accords with the orders which the provost may from time to time receive from the general commanding in the field, and that, whatever may be the crime, the provost marshal or his assistants shall see the offender commit the act for which summary punishment may be inflicted, or if the provost marshal or his assistants should not see the offender actually commit the crime, but that sufficient proof can be established of the offender's guilt, a report shall be made to the general commanding in the field, who is hereby empowered to deal with the case as he may deem most conducive to the maintenance of good order and military discipline.

Appointment and powers of provost marshal.  
Art. of War, 164, p. 369.

#### *Articles of War.*

81. It shall be lawful for Her Majesty from time to time make, repeal, alter, or add to Articles of War for the better government of all persons subject to military law, and in particular for making rules of procedure and rules respecting any matter by this Act directed to be prescribed, and otherwise providing for carrying into effect the provisions of this Act. It shall be lawful for Her Majesty, by such Articles of War, to empower the commanding officer of a regiment to inflict imprisonment, with or without hard labour, on a soldier for a period not exceeding , and to inflict such fines and forfeitures of pay as may from time to time be in the said articles directed.

Power of Her Majesty to make Articles of War.

Appendix, No. 1.

Any Articles of War made in pursuance of this section shall be deemed to be within the powers conferred by this Act, and shall be of the same force as if enacted in this Act, and shall be judicially noticed by all judges and all courts whatsoever.

Mutiny Act, s. 1,  
p. 19.

Provided—

(1.) That no person within the United Kingdom of Great Britain and Ireland, or within the British Isles, shall by Articles of War be subject to suffer any punishment extending to life or limb, or to be kept in penal servitude, except for crimes which are by this Act expressly made liable to such punishments as aforesaid, or shall be subject, with reference to any crimes made punishable by this Act, to be punished in any manner which does not accord with the provisions of this Act:

(2.) That nothing in this Act contained shall in any manner prejudice or affect any Articles of War or other matters made, enacted, or in force, or which may hereafter be made, enacted, or in force, under the authority of the Government of India, respecting officers or soldiers or followers in Her Majesty's Indian army, being natives of India; and on the trial of all offences committed by any such native officer or soldier or follower, reference shall be had to the Articles of War framed by the Government of India for such native officers, soldiers, or followers, and to the established usages of the service.

*Commander in Chief and Secretary of State.*

Special powers of  
the Commander in  
Chief and Secretary  
of State.

Art. 137, p. 351.

Art. 169, p. 376.

Art. 134, p. 350.

Mutiny Act, 50,  
pp. 70-1.Arts. 175, 176,  
p. 378.

Arts. 178, p. 379.

Art. 177, p. 378.

82. The Commander in Chief may reduce any non-commissioned officer, not being an army schoolmaster, to the ranks; he may also sentence an army schoolmaster to dismissal or loss of service, and may discharge any soldier.

When a soldier has forfeited under Act of Parliament or otherwise the whole or any part of his service, or any pay, good conduct money, good conduct service, or any military decoration or military reward, or been subjected to any stoppage of pay, Her Majesty may, on the recommendation of the Commander in Chief, in consideration of good, faithful, or gallant service, remit or restore the whole or any portion of such forfeiture or stoppage.

The Secretary of State may, by any general or special regulations, determine whether a soldier who confesses that at the time of his attestation for Her Majesty's army he belonged to the militia or to the volunteer permanent staff, shall be returned to the militia or volunteer permanent staff, or shall be deemed to be a soldier in the same manner as if he had not belonged to the militia or to the volunteer permanent staff at the time of his attestation for Her Majesty's army.

The Secretary of State may order or withhold the payment of the whole or any part of the pay, pension, or grant or withhold any service or military decoration or reward of any officer or soldier which has been rendered subject to forfeiture.

Any arms, accoutrements, clothing, or necessities awarded by a court-martial to be made good by a soldier shall be made good in such manner as may be directed by any regulation or order of the Secretary of State.

Any money adjudged on summary punishment or by a court-martial to be paid by an offender under the provisions of this Act may be deducted from the pay of the offender, and appropriated in such manner as may be directed by any regulation or order of the Secretary of State.

In cases of doubt as to the proper issue of pay to any officer or soldier, such pay may be withheld until Her Majesty's orders respecting it have been signified through the Secretary of State.

Where it appears to the satisfaction of the Secretary of State that any soldier has deserted or left in destitute circumstances without reasonable cause, his wife, or any of his legitimate children under 14 years of age, the Secretary of State may withhold a portion not exceeding sixpence of the daily pay of a non-commissioned officer who is not below the rank of serjeant, and not exceeding threepence of the daily pay of any other soldier, and may allot the pay thus withheld to the maintenance of such wife or children in such manner as he may think fit.

*Deductions from Pay.*

Authorised deduc-  
tion only to be  
made from the pay  
of the army.Mutiny Act, 60,  
p. 83.

83. No Secretary of State, paymaster general of the army, paymaster, or other officer whatsoever, shall receive any fees or make any deductions whatsoever out of the pay of any officer or soldier in Her Majesty's army, or from their agents, which may grow due in any year, other than the usual deductions, or such other necessary deductions as may from time to time be authorised or required by Her Majesty's regulations or order signified by the Secretary of State; and every paymaster or other officer who having received any officer's or soldier's pay unlawfully detains the same for the space of one month, or refuses to pay the same when it becomes due, according to the several rates and agreeably to the several regulations established by Her Majesty's orders, shall, on proof thereof before a court-martial, be discharged from his employment, and shall forfeit one hundred pounds, and the informer, if a soldier, shall, if he demand it, be discharged from any further service.

## PART III.

## APPLICATION OF MILITARY LAW.

*Persons subject to Military Law.*

**84.** The following persons are subject to military law, and all the provisions of this Act and all Articles of War apply to such persons accordingly ; that is to say,—

Description of persons subject to military law.

(1.) Every person commissioned or in pay as an officer, or serving or in pay as a warrant officer, or attested or in pay as a non-commissioned officer or soldier in Her Majesty's army :

(2.) All medical storekeepers, apothecaries, hospital stewards, and others serving in the medical department of the army :

(3.) All persons in the recruiting service receiving pay, and all pensioners receiving allowances in respect of such service :

(4.) Every officer and soldier of any colonial or foreign troops which are serving Her Majesty under the command of any officer having a commission from Her Majesty :

(5.) All persons who in time of war are followers of or accompany Her Majesty's army or any portion thereof when in the field :

(6.) All persons belonging to Her Majesty's Indian forces who may be commissioned or in pay as officers, or who may be listed or in pay as non-commissioned officers or soldiers, or who may be serving or hired to be employed in the artillery or any of the trains of artillery, or as master gunners or gunners, or as conductors of stores, or who may be serving in the department of engineers, or in the corps of sappers and miners, or pioneers, or as military surveyors or draftsmen, or in the ordnance or public works or commissariat department :

(7.) Master gunners :

(8.) Conductors of stores :

(9.) Officers and persons who are or may be serving in the commissariat and ordnance store departments :

(10.) Persons in the War Department, when serving with any part of Her Majesty's army at home or abroad, under the command of any commissioned officer :

Query.

(11.) All civil officers who may be employed by or act under the Secretary of State for War at any of Her Majesty's establishments in the Islands of Jersey, Guernsey, Alderney, Sark, and Man, and the islands thereto belonging, or at foreign stations :

Query.

(12.) All persons commissioned or in pay as officers of the militia :

(13.) All persons receiving pay as members of the permanent staff of any militia, yeomanry, or volunteer regiment :

(14.) All persons being enrolled in the militia who are attached for purposes of instruction, or otherwise, to a regiment or body of troops of the regular forces :

(15.) All militia recruits and other persons in the militia receiving pay during the period of preliminary training, when the militia battalions to which they belong are not for the time being out for training and exercise :

(16.) Every officer of the yeomanry or volunteer forces, whether in receipt of pay or otherwise, during and in respect of the time when with his own consent he may be attached to or doing duty with any body of troops then subject to this Act, whether of the regular, reserve, or auxiliary forces, or any officer of the yeomanry or volunteer forces when ordered on duty by the military authorities :

Query.

(17.) All men enrolled in the reserve force when called out for training or exercise, or when kept on duty having volunteered their services, or when called out in aid of the civil power, or when called out on permanent service under Her Majesty's proclamation :

(18.) Every person enrolled in the Army Reserve at any period during which he is not otherwise subject to military law in respect of a wilful neglect or disobedience of any order made by the Secretary of State under the provisions of any Act then in force for the government or regulation of the Army Reserve, or in respect of absence without reasonable cause on two consecutive occasions when he is duly ordered to be present at any place for the receipt of pay or otherwise, or in respect of fraudulent enlistment in the regular or auxiliary forces :

(19.) All persons who may, by any other Act of Parliament for the time being in force, be declared to be subject to this part of this Act on particular occasions or

## Appendix, No. 1.

during particular times on the occasions and during the times and subject to the conditions in such Act specified :

(20.) For the purposes of this Act a person shall not, after the expiration of six months from the date of his enlistment, attestation, or re-engagement, be entitled to claim his discharge on the ground of any error or illegality in such enlistment, attestation, or re-engagement.

Militia may be attached to regular forces.  
Mutiny Act, 104, p. 39.

85. Her Majesty may, by order of the Secretary of State, and subject to such conditions as may be determined by him, attach to any regiment of the army in the United Kingdom any regiment or regiments of militia, and the officers, non-commissioned officers, and men (including the permanent staff) of any such regiment or regiments so attached shall be deemed for all purposes to form part of the regiment to which they are attached: Provided that no person belonging to the militia shall be required to serve for a longer period, or in any other county than that during and in which he might have been required to serve, or shall be liable to any greater punishment than that to which he might have been subjected, if this Act had not been passed.

Yeomanry or volunteers may be attached to regular forces.  
Mutiny Act, 105, p. 140.

86. Her Majesty may, by order of the Secretary of State, and subject to such conditions as may be determined by him, attach to any regiment of the army in the United Kingdom any corps of yeomanry or volunteers, and the officers, non-commissioned officers and men (including the permanent staff) of any regiment so attached shall be deemed for all purposes to form part of the regiment of the army to which they are attached: Provided that no person belonging to the yeomanry or volunteers shall be required to serve in any other manner than that in which he might have been required to serve, or shall be liable to any greater punishment than that to which he might have been subjected if this Act had not passed.

*Trial and Punishment of Warrant Officers.*

Trial and punishment of warrant officers.  
Art. of War, 128, p. 345.

87. The provisions of this Act relating to the trial and punishment of offences shall (save where otherwise expressly provided) apply to a warrant officer, in the same manner in all respects as if he were a non-commissioned officer; provided—

(1.) That he shall not be tried by regimental court-martial; and

(2.) That he may be sentenced by a district or general court-martial to be dismissed from the service or to be suspended from rank, pay, and allowances for any stated period, or to be reduced to the bottom or any other place in the list of the rank which he may hold, or to be reduced to an inferior class of warrant officer; and

(3.) That if he was originally enlisted as a private soldier and continued in the service until his appointment to be a warrant officer (but not otherwise), he may be sentenced by a district or general court-martial to be reduced to the ranks, or to be remanded to regimental duty in the rank held by him immediately before his appointment to be a warrant officer; and

(4.) That the government of any of the presidencies in India may reduce any warrant officer serving in or belonging to such presidency to a lower grade of warrant rank, or may remand any such warrant officer to regimental duty in the rank held by him immediately previous to his appointment to be a warrant officer; and

(5.) For the trial of a warrant officer, no more than two officers shall be taken from the regiment in which the warrant officer is serving, or be under the rank of captain;

(6.) The president of a court-martial for the trial of a warrant officer shall not be under the rank of a field officer, unless in the case where it is not practicable to procure a field officer for president;

(7.) Warrant officer includes a hospital apprentice in India, although not appointed by warrant.

*Royal Marines.*

Application of Act to the marines.  
See Marine Mutiny Act.

88. This Act shall apply to Her Majesty's Royal Marine forces when on shore, or on duty on board transport ships or merchant ships, or under other circumstances in which they are not subject to the Naval Discipline Act, 1866, in the same manner in all respects as if the said Royal Marine forces were part of Her Majesty's army, subject to the provisions following; that is to say,

Modification as to the auxiliary forces and others.

89. The following modifications shall apply in the case of persons subject to military law other than the marines, and who do not belong to Her Majesty's army; that is to say,



## PART IV. GENERAL PROVISIONS.

- 90.** Whenever any person subject to military law has been tried by any court of civil judicature, the clerk of such court, or his deputy, or other officer having the custody of the records of such court, shall, if required by the officer commanding the regiment to which such officer or soldier belongs, or by any other officer, for the purposes of any trial by court-martial, transmit to him a certificate setting forth the offence for which the prisoner was tried, together with the judgment of the court thereon if he was convicted, or of his acquittal if he was acquitted, and shall be allowed for such certificate a fee of 3s. Any such certificate shall be sufficient proof of the conviction and sentence or of the acquittal of the prisoner, as the case may be, in any court and any proceeding wherein it may be necessary to inquire into the same.
- 91.** If any soldier confesses to his commanding officer that he fraudulently enlisted in Her Majesty's army, and evidence of the truth or falsehood of such confession cannot then be conveniently obtained, a record of such confession, signed by such commanding officer, shall be entered in the regimental books, and such soldier shall continue to do duty in the regiment in which he may then be serving, or in any other regiment to which he may be transferred, until he is discharged, or until legal proof can be obtained of the truth or falsehood of such confession, of the making of which confession the said record, or a copy thereof, purporting to bear the signature of the officer having the custody of the regimental books, shall be sufficient evidence.
- Where such confession appears to be true, such soldier may be tried for fraudulent enlistment, and if convicted may be punished accordingly; and where such confession appears to be false, such soldier may be tried on a charge for making a false statement to his commanding officer, and if convicted may be sentenced to any punishment not exceeding imprisonment.
- Any letter purporting to be written in reply to an inquiry respecting the truth or falsehood of such confession, and to be signed by or on behalf of the commanding officer of the regiment to which such soldier confesses himself to have belonged at the time of such fraudulent enlistment, shall be admissible in evidence against such soldier, and shall be deemed to be evidence of the facts stated therein.
- 92.** A soldier confessing to his commanding officer that he fraudulently enlisted in Her Majesty's army may, instead of being tried by a court martial, be declared guilty of fraudulent enlistment, and be ordered to serve in any regiment by the Commander in Chief, or by the general or other officer commanding on any foreign station, and shall thereupon suffer all such forfeitures as he would have suffered if he had been convicted by a court martial of fraudulent enlistment.
- 93.** If any soldier on furlough is detained by sickness or other casualty rendering necessary any extension of such furlough, in a place where there is not any military officer of the rank of captain, or of higher rank, or any adjutant of regular militia, within convenient distance of the place, it shall be lawful for any justice of the peace who is satisfied of such necessity to grant an extension of furlough for a period not exceeding one month; and the said justice shall by letter immediately certify such extension and the cause thereof to the commanding officer of the regiment to which such soldier belongs, if known, and if not then to the agent of the regiment, in order that the proper sum may be remitted to such soldier, who shall not during the period of such extension of furlough be liable to be treated as a deserter, or as absent without leave. Any soldier who, with the view of obtaining an extension of furlough, makes any false representation to a justice of the peace shall on conviction by court-martial suffer any punishment not exceeding imprisonment.
- 94.** A person who is commissioned and in full pay as an officer shall not be capable of being nominated or elected to be sheriff of any county, borough, or other place, or to be mayor, portreeve, alderman, or to hold any office in any municipal corporation in any city, borough, or place in Great Britain or Ireland: Provided that the competence or liability of any officer to be nominated to or to hold any of the aforesaid offices shall not be deemed to be affected by reason of the regiment to which he belongs being assembled for annual training at the time of his nomination to, or during the period of his tenure of such office.
- 95.** The commanding officer of every regiment shall, upon its first coming to any place where it is to remain in quarters, cause public proclamation to be made that if the landlords or other inhabitants suffer the soldiers to contract debts, such debts will not be discharged.
- The commanding officer refusing or neglecting so to do shall be suspended for three months, during which time his whole pay shall be applied to the discharging of such debts as have been contracted by the soldiers under his command beyond the amount of their daily subsistence; if there be any overplus remaining it may be returned to him.

Record of civil conviction of soldier to be forwarded to commanding officer. Mutiny Act, 39, p. 60.

Proceedings on soldier confessing fraudulent enlistment to commanding officer. Art. of War, 46, p. 310.

Power to dispense with trial of soldier confessing fraudulent enlistment. Art. of War, 47, p. 312.

Furlough in case of sickness. Art. of War, 5, p. 295.  
Mutiny Act, 38, p. 59.

Officers not to be sheriffs or mayors, &c. Mutiny Act, 41, § 3.

Debts of soldiers. Art. of War, 7, p. 297.



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Privileges of  
soldier in respect of  
civil process.  
Mutiny Act, 40,  
p. 61.

**96.** A soldier shall not be liable to be cited before any civil court in Her Majesty's dominions for any original debt not amounting to 30 l.; or the breach of any agreement, or other engagement whatever, by parole or in writing; or for having left or deserted his employer or master, or his contract, work, or labour, or misconducting himself respecting the same.

Where any soldier is cited before any civil court in contravention of this section, all legal processes in or incidental to such citation shall be void; and any judge of any civil court may examine into the complaint of any soldier who is dealt with in contravention of this section, and may, if necessary, by warrant under his hand, discharge such soldier without fee, and may award reasonable costs to him, and he shall have the same remedy for the recovery of costs as he would have had if costs had been awarded in his favour in any action or other proceeding in such court.

Provided that—

(1.) Any plaintiff having cause of action or suit against any soldier may, notwithstanding anything in this section contained, proceed in such action or suit to judgment, and have execution other than against the person, pay, or military necessaries and equipments of such soldier; and

(2.) Nothing in this Act contained shall exempt any apprentice from any punishment or liability to which he may be subject in pursuance of any law for the time being in force.

Liability of soldier  
to maintain wife  
and children.  
Mutiny Act, 106,  
p. 140.

**97.** A soldier shall be liable to contribute to the maintenance of his wife and of his children, and also to the maintenance of any bastard child of which he may be proved to be the father, to the same extent as if he were not a soldier; but execution shall not issue against his pay, military necessaries, and equipments, nor shall he be liable to be imprisoned or taken out of Her Majesty's service in consequence of such liability or any order made for enforcing the same; nor shall he be liable to be punished as an idle or disorderly person, or as a rogue and vagabond, or as an incorrigible rogue, under the Act passed in the fifth year of the reign of King George 4, c. 83, intituled "An Act for the punishment of idle and disorderly persons and rogues and vagabonds in that part of Great Britain called England," or under any other Act of Parliament for the offence of neglecting to maintain his family or any member thereof, or of leaving his family or any member thereof chargeable to any parish, township, or place, or combination of parishes, or to the common fund of any union; nor shall he in Ireland be liable to be convicted under the Act passed in the Session of Parliament held in the 10th and 11th years of the reign of Her present Majesty, intituled "An Act to make provision for the punishment of vagrants and persons offending against the laws in force for the relief of the destitute poor in Ireland," for the offence of deserting or wilfully neglecting to maintain his wife or any child whom he may be liable to maintain, so that such wife or child shall become destitute, and be relieved in or out of the workhouse of any union in Ireland.

When any order is made under the Acts relating to the relief of the poor, or under the Bastardy Acts, on a soldier, or, in Scotland, decree is pronounced by a court of law having jurisdiction, in an action of aliment or filiation and aliment against a soldier, for the maintenance of his wife or children, or for the maintenance of any such bastard child as aforesaid, or of any such persons, or where, in Ireland, any civil bill decree has been made for the cost of the maintenance of any illegitimate child against any soldier, being the putative father of such child, under the provisions of the Act passed in the Session of Parliament held in the 26th and 27th years of the reign of Her present Majesty, intituled "An Act to amend the law enabling boards of guardians to recover costs of maintenance of illegitimate children in certain cases in Ireland," or when any order or decree has been made on or against any soldier for the recovery of the cost of any relief given to the wife or child of such soldier, under the Acts relating to the relief of the poor in Ireland by way of loan, a copy of such order or decree shall be left at the office of the Secretary of State; and the Secretary of State may withhold a portion not exceeding 6 d. of the daily pay of a non-commissioned officer who is not below the rank of serjeant, and not exceeding 3 d. of the daily pay of any other soldier, and allot the sum so withheld in liquidation of the sum adjudged to be paid by such order or decree.

Where a summons is issued against a soldier under the said Acts or any of them, or an action is raised against him at common law, or under any Act of Parliament, for the purpose of enforcing against him any such liability as aforesaid, and such soldier is quartered out of the petty sessional division in which the summons is issued, or out of the jurisdiction of the court in which the action is raised, the summons shall be served on his commanding officer, and such service shall not be valid unless there be left therewith, or along with the service copy thereof, in the hands of the commanding officer, a sum of money to be adjudged as costs incurred in obtaining the order or decree (should an order be obtained or decree pronounced against the soldier) sufficient to enable him to attend the hearing of the case and return to his quarters; and no summons whatever under the said Acts or any of them, or at common law, shall be valid against a soldier if served after the time at which an order has been given for the embarkation for service out of the United Kingdom of the body of troops to which the soldier belongs.

**98.** Any person who confesses himself to be a deserter, or absent without leave, shall be liable to be taken before any competent magistrates, and on proof that his confession was false, shall, on summary conviction, be liable to be imprisoned for any period not exceeding three months.

If,

Fraudulent  
confession of  
desertion or absence  
without leave  
punishable by civil  
magistrate.  
Mutiny Act, 37,  
p. 57.

If, when such person is brought before the said magistrates, it is proved to their satisfaction that such confession has been made, but evidence of the truth or falsehood of such confession is not then forthcoming, such magistrates within the United Kingdom shall remand such person, and transmit a statement of the case and descriptive return to the Secretary of State, with a request to be informed whether such person appears to belong or to have belonged to the regiment from which he has so confessed himself to have deserted, or to be absent without leave; and any letter purporting to be signed by or on behalf of the Secretary of State, shall be admissible in evidence against such person, and shall be deemed to be legal evidence of the facts stated therein, and on the receipt thereof the said magistrates shall forthwith proceed to adjudicate upon the case.

"Competent magistrates," for the purposes of this section, shall, in England, mean any two justices of the peace, or any magistrate having the same jurisdiction as two justices of the peace, and elsewhere, shall mean any magistrate or magistrates exercising a similar jurisdiction to that which is exercised in England by two justices of the peace.

99. Any person who in any part of Her Majesty's dominions, or by any means whatsoever, directly or indirectly, procures any soldier to desert or to be absent without leave, or attempts to procure or persuades any soldier to desert, or to be absent without leave, and any person who, knowing that any soldier is about to desert, or to be absent without leave, aids or assists him in deserting, or being absent without leave, or, knowing any soldier to be a deserter, or absent without leave, conceals such deserter or absentee, or aids or assists such deserter or absentee in concealing himself, or aids or assists in his rescue, shall be deemed guilty of a misdemeanor, and shall, on summary conviction, be liable to imprisonment, with or without hard labour, for any term not exceeding six months.

Penalty for inducing soldiers to desert.  
Mutiny Act, 81, p. 110.

100. With respect to the apprehension of deserters or absentees without leave, the following provisions shall have effect:

Apprehension of deserters or absentees without leave.  
Mutiny Act, 84, p. 64.

(1.) Upon reasonable suspicion that a person is a deserter or absentee without leave, it shall be lawful for any constable, or if no constable can be immediately met with, then for any officer or soldier or other person, to apprehend such suspected person, and forthwith to bring him before a justice:

(2.) If it appears to the satisfaction of such justice that such suspected person is a deserter or absentee without leave, such justice shall forthwith cause him to be conveyed in civil custody to the head quarters or depôt of the regiment to which he belongs, if stationed within a convenient distance from the place of commitment, or if not so stationed, then to the nearest or most convenient prison (other than a military prison set apart under the authority of this Act) or police station:

(3.) If the deserter or absentee without leave has been apprehended by a party of soldiers of his own regiment in charge of a commissioned officer, such justice may deliver him up to such party, unless the officer deems it necessary to have the deserter or absentee without leave committed to prison for safe custody:

(4.) Such justice shall transmit an account of the proceedings to the Secretary of State specifying therein whether such deserter or absentee without leave was delivered to his regiment, or to the party of his regiment, in order to his being taken to the head quarters or depôt of his regiment, or whether such deserter or absentee without leave was committed to prison, to the end that the person so committed may be removed by an order from the Secretary of State, and proceeded against according to law:

(5.) Such justice shall also in the United Kingdom send to the Secretary of State a report stating the names of the persons by whom or by whose means the deserter or absentee without leave was apprehended, and the Secretary of State shall transmit to such justice an order for the payment to such persons of such sum not exceeding forty shillings as the Secretary of State is satisfied they are entitled to:

(6.) For such information, commitment, and report as aforesaid, the clerk of the justice shall be entitled to a fee of 2 s.; and every governor of a gaol and other person into whose custody any person charged with desertion or being absent without leave is committed, shall immediately on the receipt of the person so charged into his custody pay such fee of 2 s., and shall notify the fact to the Secretary of State, and transmit also to the Secretary of State a copy of the commitment, to the end that Secretary of State may order repayment of such fee:

(7.) In the construction of this section "justice of the peace" shall mean in the United Kingdom any justice of the peace, and in any other part of Her Majesty's dominions, any justice of the peace or persons holding an office corresponding to that of justice of the peace.

101. Any officer or soldier who, in pursuit of any deserter or absentee without leave, forcibly enters into, or breaks open any dwelling-house or outhouse, or gives any order under which any dwelling-house or outhouse is forcibly entered into or broken open, without a warrant, shall forfeit a sum not exceeding 20 £, to be recovered in the United Kingdom, on summary conviction, before two justices.

Penalty for forcible entry in pursuit of deserters without warrant.  
Mutiny Act, 82, p. 111.

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102. Every

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Temporary custody of deserters, or absentees without leave, in gaols. Mutiny Act, 35, p. 67.

Penalty for disobedience by agents. Mutiny Act, 77, p. 107.

Penalty on trafficking in commissions. Mutiny Act, 78, p. 108.

Penalty for procuring false musters. Mutiny Act, 79, p. 109.

Penalty on purchasing soldiers' necessaries, stores, &c. Mutiny Act, 85, p. 115.

**102.** Every governor of a prison in Her Majesty's dominions is hereby required to receive and confine therein every deserter or absentee without leave, who may be delivered into his custody by any soldier or other person conveying such deserter or absentee without leave under lawful authority, on production of the warrant of the justice of the peace on which such deserter or absentee without leave has been taken, or some order from the Secretary of State, which order shall continue in force until the deserter or absentee without leave has arrived at his destination; and such governor of a gaol shall be entitled to 1 s. for the safe custody of the said deserter while halted on the march, and to such subsistence for his maintenance as may be directed by Her Majesty's regulations.

**103.** The agents for the several regiments in Her Majesty's forces are hereby required to observe such orders as may from time to time be given by Her Majesty under Her Sign Manual, or by the Secretary of State, or by Her Majesty's Lord Lieutenant or Chief Governor of Ireland, or by the Commissioners of Her Majesty's Treasury; and if any person, being or having been such an agent as aforesaid, refuses or neglects to comply with such orders in relation to his duty as agent, or unlawfully withholds or detains the pay of any officer or soldier for a longer period than the space of one month after the receipt thereof, he shall for the first offence forfeit the sum of 100 l., and, if still an agent, for the second offence be discharged from his employment as an army agent, and be utterly disabled to have or hold such employment thereafter, or, if he has ceased to be an army agent, shall for the second and every succeeding offence forfeit the sum of 200 l.

**104.** Every person (except the Army Purchase Commissioners and persons acting under their authority by virtue of the provisions of the Regulation of the Forces Act, 1871) who negotiates, acts as agent for, or otherwise aids or connives at, the sale or purchase of any commission in Her Majesty's army, or the giving or receiving of any valuable consideration in respect of any promotion in or retirement from Her Majesty's army or any employment therein, shall be guilty of a misdemeanor; and any person who negotiates, acts as agent for, or otherwise aids or connives at, any exchange in respect of which any sum of money or other consideration has been given or received, shall be guilty of a misdemeanor.

**105.** Every person, not having any military commission, who gives or procures to be given any untrue certificate, whereby to excuse any soldier for his absence from any muster, or any other service which he ought to attend or perform, or who directly or indirectly causes to be taken any money or gratuity for mustering any soldiers, or for signing any muster rolls or duplicates thereof, shall forfeit for every such offence the sum of 50 l.; and any person who is falsely mustered, or offers himself to be mustered, or lends or furnishes any horse to be falsely mustered, shall, on summary conviction, forfeit for every such offence the sum of 20 l.; and the informer, if he belongs to Her Majesty's service, shall, if he demand it, be forthwith discharged.

**106.** Every person who knowingly detains, buys, exchanges, or receives from any soldier, or any other person acting for or on his behalf, on any pretence whatsoever, or who solicits or entices any soldier, or is employed by any soldier, knowing him to be such, to sell any arms, ammunition, military decoration, or military furniture, or any provisions, or any sheets or other articles used in barracks provided under barrack regulations, or regimental necessaries, or any article of forage provided for any horses belonging to Her Majesty's service, or who has in his possession or keeping any such arms, ammunition, medals, clothes, furniture, provisions, spirits, articles, necessaries, or forage, and does not give a satisfactory account how he came by the same, or changes the colour of any clothes as aforesaid, shall forfeit for every such offence any sum not exceeding 20 l., together with treble the value of all or any of the several articles of which such offender has so become or may be possessed; and any person who having been so convicted is afterwards guilty of any such offence, shall for every such offence forfeit any sum not exceeding 20 l. but not less than 5 l., and the treble value of all or any of the several articles of which such offender may have so become possessed, and shall, in addition to such forfeiture, be imprisoned, with or without hard labour, for any term not exceeding six months; and if any credible person proves on oath before a justice of the peace, or person exercising like authority, according to the laws of the part of Her Majesty's dominions in which the offence may be committed, that there is reasonable cause to suspect that any person has in his possession, or on his premises, any property of the description in this section described, on or with respect to which any such offence has been committed, such justice may grant a warrant to search for such property as in the case of stolen goods; and if on such search any such property is found, it shall be seized by the officer charged with the execution of such warrant, who shall bring the offender in whose possession the same is found before the same or any other justice of the peace, to be dealt with according to law.

Provided—

(1.) That it shall be lawful for the Legislature of any of Her Majesty's dominions beyond the limits of the United Kingdom, on the recommendation of the officer or officers for the time being administering the government thereof, but

but not otherwise, to make provision by law for reducing such pecuniary penalty, if not exceeding 20 *l.*, to such amount as may to such Legislature appear to be better adapted to the ability and pecuniary means of Her Majesty's subjects and others inhabiting the same, which reduced penalty shall be sued for and recovered in such and the same manner as the full penalty hereby imposed

(2.) That it shall be competent to Her Majesty, or to the person or persons administering the government of any such dominions as last aforesaid, to exercise in respect of the laws so to be passed as aforesaid, all such powers and authorities as are by law vested in Her Majesty or in any such officer or officers as aforesaid in respect of any other law made or enacted by any such Legislature.

**107.** For the better preservation of game and fish in or near places where any officers may at any time be quartered, be it enacted, that every officer who, without leave in writing from the person or persons entitled to grant such leave, takes, kills, or destroys any game or fish in the United Kingdom, shall for every such offence forfeit the sum of 5 *l.*, to be recovered on summary conviction before two justices.

Penalty on killing game without leave.  
Mutiny Act, 88, p. 122.

**108.** When any person holds any canteen under the authority of the Secretary of State, it shall be lawful for any two justices within their respective jurisdictions to grant or transfer any beer, wine, or spirit license to such persons without regard to time of year or to the notices or certificates required by any Act in respect of such licenses; and the commissioners of excise, or their proper officers within their respective districts, shall also grant such licenses as aforesaid; and such persons so holding canteens, and having such licenses, may sell therein victuals and exciseable liquors, as empowered by such excise license, without being subject to any penalty or forfeiture.

Licenses of canteens.  
Mutiny Act, 93, p. 127.

**109.** All muster-rolls, and accounts, and pay and pension lists which are required to be verified by declaration, shall be so verified and attested free of stamp duty, and without fee or reward paid for such declaration or attestation.

Attestation of accounts.  
Mutiny Act, 94, p. 128.

**110.** All commissaries, regimental paymasters, and all other accountants for military services, on making up their accounts, and all commissaries on returning from any foreign service, shall severally make such declarations as may from time to time be prescribed by the Secretary of State. Any declarations mentioned in this section, if made in the United Kingdom, shall be made before some justice or other person authorised to administer oaths and declarations, and if made on foreign service, shall be made before the officer commanding in chief, or the second in command, or the quartermaster or deputy quartermaster general or any assistant quartermaster general of the army; and such person as aforesaid shall respectively have power to administer and receive the same.

Commissaries, &c. to attest their accounts.  
Mutiny Act, 95, p. 128.

## PART V.

### SAVING CLAUSES AND DEFINITIONS.

**111.** In reckoning time for the purposes of this Act, the following regulations shall be observed; that is to say:—

Mode of computing time.

For the purposes of imprisonment, a part of a day shall be reckoned as a whole day:

For the purpose of deducting pay, a part of a day shall not be reckoned as a day unless it consists of six hours or upwards, and a day shall mean any 24 consecutive hours.

**112.** All crimes and offences which have been committed against any former Act for punishing mutiny and desertion, and for the better payment of the army and their quarters, or against any of the Articles of War made and established by virtue of the same, may, during the continuance of this Act, be tried and punished in like manner as if they had been committed against this Act; and every warrant for holding any court-martial under any such former Act shall remain in full force, and all proceedings of courts martial convened and held under any such warrant shall be continued notwithstanding the expiration of such Act: Provided that no person shall be liable to be tried or punished for any offence against any of the said Acts or Articles of War which appears to have been committed more than three years before the date of the warrant for such trial, unless the person accused, by reason of his having assented himself, or of some other manifest impediment, has not been amenable to justice within that period, in which case such person shall be liable to be tried at any time not exceeding two years after the impediment has ceased.

Offences against former Mutiny Acts and Articles of War.  
Mutiny Act, 97, p. 130.

**113.** Nothing in this part of this Act contained shall in any manner affect any Articles of War enacted or in force, or which may hereafter be enacted or in force, under the authority of the Government of India, respecting officers, soldiers, or followers of Her Majesty's Indian Army, being natives of India; and in the trial of all offences committed

Saving as to India.  
Mutiny Act, 1, p. 19.

Appendix, No. 1.	by any such native officer, soldier, or follower, reference shall be had to the Articles of War framed by the Government of India for such native officers, soldiers, or followers, and the established usages of the service.
Rebels, &c., to be deemed enemies.	<b>114.</b> All armed mutineers, armed rebels, armed rioters, and pirates shall be deemed to be enemies within the meaning of this Act.
Construction of enactments referring to Mutiny Act and Articles of War.	<b>115.</b> All Acts of Parliament, warrants, regulations, and orders which mention or refer to the Mutiny Act and Articles of War, or any provisions of the Mutiny Act or Articles of War, shall during the continuance of this Act be read and have effect as if this Act, or such part thereof as may be applicable, were therein substituted for the Mutiny Act and Articles of War, or such provisions of the Mutiny Act or Articles of War.
Act to be printed as amended.	<b>116.</b> Where any section or sub-section of this Act is amended by the substitution by Act of Parliament of another section or sub-section, it shall be the duty of Her Majesty's printers, in all copies of such Act issued after the expiration of the current year during which such Act is in force, to substitute the amending section or sub-section for the section or sub-section thereby amended.
Interpretation of terms.	<b>117.</b> In this Act, if not inconsistent with the context, the following terms have the meanings herein-after respectively assigned to them ; that is to say, The expression "Commander in Chief," includes the Field Marshal or other officer commanding in chief Her Majesty's forces for the time being : The expression "the Secretary of State," means such one of Her Majesty's Principal Secretaries of State for the time being as Her Majesty thinks fit to entrust with the seals of the War Department, and in default of the seals of the War Department being for the time being in the hands of any Secretary of State, then any one of Her Majesty's Principal Secretaries of State. The expression "regiment" includes corps : The expression "officer" includes every person subject to military law who is a commissioned officer of Her Majesty : The expression "soldier" includes non-commissioned officer : The expression "United Kingdom" includes the Channel Islands and the Isle of Man : The expression "Colony" The expression "Her Majesty's forces in India" means The expression "Her Majesty's Native forces in India" means
Mutiny Act, 102, p. 139.	
Mutiny Act, s. 108, p. 139.	
"Prison."	The expression "prison" means any military or other prison, gaol, house of correction, bridewell, or penitentiary :
"Governor."	The expression "governor" means any gaoler, keeper, or other chief officer of a prison : The expression "military decoration" means any medal, clasp, good-conduct badge, or decoration : The expression "military reward" means any gratuity or annuity for long service or good conduct ; it also includes any good conduct pension and any other military pecuniary reward : The expression "oath" includes affirmation in cases where an affirmation is by the law of England allowed instead of an oath.

## Appendix, No. 2.

PAPER handed in by Sir Henry Thring.

PROVISIONS OF MUTINY ACT AND ARTICLES OF WAR  
ARRANGED UNDER HEADINGS.

Appendix, No. 2.

## ARRANGEMENT OF HEADINGS.

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PROVISIONS OF MUTINY ACT AND ARTICLES OF WAR ARRANGED  
UNDER HEADINGS.

PART I.

MILITARY LAW.

MUTINY ACT.

ARTICLES OF WAR.

*Misconduct on Service (a).*

15. If any person subject to this Act shall at any time during the continuance of this Act

Hold correspondence with or give advice or intelligence to any rebel or enemy of Her Majesty, either by letters, messages, signs, or tokens, in any manner or way whatsoever;

Or shall treat or enter into any terms with such rebel or enemy without Her Majesty's license, or license of the general or chief commander;

Or shall misbehave himself before the enemy;

Or shall shamefully abandon or deliver up any garrison, fortress, post, or guard committed to his charge, or which he shall have been commanded to defend;

Or shall compel the governor or commanding officer of any garrison, fortress, or post, to deliver up to the enemy or to abandon the same;

Or shall speak words or use any other means to induce such governor or commanding officer, or others, to misbehave before the enemy, or shamefully to abandon or deliver up any garrison, fortress, post, or guard committed to their respective charge, or which he or they shall be commanded to defend;

All and every person and persons so offending in any of the matters before mentioned, whether such offence be committed within this realm or in any other of Her Majesty's dominions, or in foreign parts, upon land or upon the sea, shall suffer death, or penal servitude, or such other punishment as by a court martial shall be awarded.

51. Any officer or soldier who

Shall hold correspondence with or give intelligence to the enemy, directly or indirectly, —or relieve with money, victuals, or ammunition, or knowingly harbour or protect an enemy; —or

52. Misbehave before the enemy, or shamefully abandon or deliver up any garrison, fortress, post, or guard committed to his charge, or which it was his duty to defend; —or shall compel, or speak words, or use other means to induce the governor or commanding officer, or any other person, to deliver up to the enemy, or to abandon, any garrison, fortress, post, or guard; —or

53. Leave his commanding officer or his post to go in search of plunder; —or

54. Treacherously make known the watchword to any person not entitled to receive it according to the rules and discipline of war; —or

55. By discharging fire-arms, drawing swords, beating drums, making signals, using words, or by any means whatever intentionally occasion false alarms in action, camp, garrison, or quarters; —or

56. Cast away his arms or ammunition in presence of an enemy; —or

58. Who, being employed in foreign parts, shall do violence to any person bringing provisions or other necessities to the quarters of our forces; —or force a safeguard; —or break into any house or store or cellar for plunder; —or

Shall, on conviction of any one of the aforesaid offences, suffer death, penal servitude for a term of not less than five years, or such other punishment as by a general court martial shall be awarded.

59. Any officer or soldier who

Shall send any flag of truce to the enemy without due authority; —or

60. Who shall give a parole or watchword different from what he received, without good and sufficient cause; —or

61. Who shall, in operations in the field, spread reports by words or by letters calculated to create unnecessary alarm by spreading such reports, either in the vicinity or in rear of the army; —or

62. Who shall, in action or previously to going into action, use words tending to create alarm or despondency; —or

63. Who shall, either verbally or in writing, disclose the numbers, position, magazines, or preparations of the army for sieges or movements, and

(a) Mutiny Act, s. 15; Articles of War, 51, 52, 53, 54, 55, 56, 58, 59, 60, 61, 62, 63, 64, 65, 66, 103.

## MUTINY ACT.

## ARTICLES OF WAR.

App., No. 2.

and by such disclosures shall produce effects injurious to our army and our service;—or

64. Who shall leave the ranks in order to secure prisoners or horses, or on pretence of taking wounded officers or men to the rear, without orders from his superior officer;—or

65. Who shall leave his guard, picquet, or post;—or shall be taken prisoner by any want of due precaution, or by disobedience of orders;—or fall into the enemy's hands by passing through outposts;—or

66. Who shall irregularly detain, seize, or appropriate to his own corps or detachment bread, spirits, forage, or any supplies proceeding to the army, contrary to the orders issued in that respect.

103. Any officer or soldier who

Shall commit any waste or spoil, either in walks of trees, parks, warrens, fishponds, houses, or gardens, vineyards, olive groves, corn fields, inclosures, or meadows;

Or shall maliciously destroy any property; whether belonging to our own subjects, or to inhabitants of other countries;

Unless the destruction of property shall be ordered by the Commander in Chief of our forces, to annoy rebels or other enemies in arms against us;

Shall, if an *officer*, on conviction of any one of the aforesaid offences, be liable to be cashiered,—or suffer such other punishment, according to the nature and degree of the offence, as by the judgment of a *general court martial* may be awarded;—and, if a *non-commissioned officer or soldier*, shall, on conviction of any of the aforesaid offences, be punished, according to the nature and degree of the offence, by a *general, district, garrison, regimental*, or other court martial.

*Punishment of Sentinel (a).*

15. If any person subject to this Act shall

At any time during the continuance of this Act leave his post before being regularly relieved;—or shall sleep on his post;

All and every person and persons so offending in any of the matters before mentioned, whether such offence be committed within this realm or in any other of Her Majesty's dominions, or in foreign parts, upon land or upon the sea, shall suffer death, or penal servitude;—or such other punishment as by a court martial shall be awarded.

57. Any officer or soldier, who, being a sentinel, shall be found sleeping on his post, or shall leave it before being regularly relieved, shall on conviction of any one of the aforesaid offences suffer death, penal servitude for a term of not less than five years, or such other punishment as by a *general court martial* shall be awarded.

*Mutiny and Insubordination (b).*

15. If any person subject to this Act shall at any time during the continuance of this Act begin, excite, cause, or join in any mutiny or sedition in any forces belonging to Her Majesty's army, or Her Majesty's Royal Marines, or shall not use his utmost endeavours to suppress the same, or shall conspire with any other person to cause a mutiny, or coming to the knowledge of any mutiny or intended mutiny shall not, without delay, give information thereof to his commanding officer;—or shall strike or shall use or offer any violence against his superior officer, being in the execution of his office, or shall disobey any lawful command of his superior officer;

36. Any officer or soldier who

Shall begin, excite, cause, or join in any mutiny or sedition in any of our land or marine forces, or in any party, post, detachment, or guard, on any pretence whatever;—or who, being present at any mutiny or sedition, shall not use his utmost endeavour to suppress the same; or who shall conspire with any other person to cause a mutiny;—or who, coming to the knowledge of any mutiny or intended mutiny, shall not without delay give information thereof to his commanding officer;—or

37. Who shall strike a superior officer, or use or offer any violence against him, being in the execution

(a) Mutiny Act, 15; Article of War, 57.

(b) Mutiny Act, 15; Articles of War, 36, 37, 38, 39, 40, 41, 68, 161



## MUTINY ACT.

officer;—or who being confined in a military prison shall offer any violence against a visitor or other his superior military officer, being in the execution of his office;—all and every person and persons so offending in any of the matters before mentioned, whether such offence be committed within this realm or in any other of Her Majesty's dominions, or in foreign parts, upon land or upon the sea, shall suffer death, or penal servitude;—or such other punishment as by a court martial shall be awarded.

## ARTICLES OF WAR.

execution of his office;—or, who being confined in a military prison, shall strike, use, or offer any violence against a visitor or other his superior military officer, being in the execution of his office;—or

38. Who shall disobey the lawful commands of his superior officer;—

Shall, if an officer, suffer death, or such other punishment as by a *general* court martial shall be awarded;—

And, if a soldier, shall suffer death, penal servitude for a term of not less than five years, or such other punishment as by a *general* court martial may be awarded.

39. Any officer or soldier who

Shall use traitorous or disrespectful words against our Royal person, or any of our Royal family;—or

40. Who, being concerned in any fray, shall refuse to obey any other officer (though of inferior rank) who shall order him into arrest;—or shall draw his sword upon or offer violence to such officer;—

Shall, if an *officer*, on conviction of any one of the aforesaid offences, before a *general* court martial, be cashiered;—and if a *soldier*, shall, on conviction thereof before a *general*, *district*, or *garrison* court martial, be liable to such punishments as such court may award.

41. Any officer or soldier who

Shall behave with contempt or disrespect towards the general or other commander in chief of our forces, or shall speak words tending to his hurt or dishonour;—or shall strike or offer violence or use threatening or insubordinate language to his superior officer;—

Shall, if an *officer*, on conviction thereof, be liable to be cashiered;—or to suffer such other punishment, according to the nature and degree of the offence, as by the judgment of a *general* court martial may be awarded;—and if a *non-commissioned officer or soldier*, shall, on conviction thereof, be punished according to the nature and degree of the offence by a *general*, *district*, or *garrison* court martial.

68. Any officer or soldier who

Shall impede the provost marshal or any other officer legally exercising authority;—or refuse to assist him when requiring his aid in the execution of his duty;

Shall, if an *officer*, on conviction of any one of the aforesaid offences, before a *general* court martial, be cashiered: and, if a *soldier*, shall, on conviction thereof before a *general*, *district*, or *garrison* court martial, be liable to such punishments as shall accord with the provisions of the Mutiny Act and with the usage of the service.

161. No person shall use menacing words, signs, or gestures, in presence of a court martial;—or shall cause any disorder or riot, so as to disturb the proceedings of the court, or shall commit any other contempt of the said court, under the penalty;—

If an officer or soldier, of being punished at the discretion of the said court, or by a court of superior power, and if a civilian, of being taken before a civil magistrate to be punished according to law.

33. Any

## MUTINY ACT.

## ARTICLES OF WAR.

## App., No. 2.

*Desertion and Absence without Leave (a).*

15. If any person subject to this Act shall desert or attempt to desert Her Majesty's service;—

All and every person or persons so offending in any of the matters before mentioned, whether such offence be committed within this realm or in any other of Her Majesty's dominions, or in foreign parts, upon land or upon the sea, shall suffer death or penal servitude;— or such other punishment as by a court martial shall be awarded.

Provided always, that any non-commissioned officer or soldier attested for or in pay in any regiment or corps who shall, without having first obtained a regular discharge therefrom, enlist himself in Her Majesty's army, may be deemed to have deserted Her Majesty's service, and shall be liable to be punished accordingly.

50. If any man, while belonging to any regiment or corps of the regular, reserve, or auxiliary forces, shall, without being discharged by the proper authorities therefrom, enlist or be enrolled, or attempt to enlist or be enrolled, in any regiment or corps, whether of the regular, reserve, or auxiliary forces, he shall be liable to be tried before a court martial on a charge for desertion.

54. Provided also, that upon the conviction by court martial of any soldier of the crime of desertion, the officer commanding in chief Her Majesty's forces may, and if the court martial has been held at a foreign station, the officer commanding in chief Her Majesty's forces at such foreign station may order such soldier to serve in any regiment or corps.

33. Any commissioned chaplain who shall absent himself from his duty (excepting in case of sickness or leave of absence) shall be brought before a *general* court martial, and punished as the circumstances of his offence may require.

42. Any officer who shall desert our service shall suffer death, or such other punishment as by a *general* court martial shall be awarded;—

Any non-commissioned officer or soldier who shall desert our service shall suffer death, or such other punishment as by a *general* court martial shall be awarded;—and if tried by a *district* or *garrison* court martial, shall suffer such punishment as such court may award;—

And any non-commissioned officer or soldier enlisted or in pay in any regiment or corps who shall, without having first obtained a regular discharge therefrom, enlist himself in our army, may be punished as a deserter from our service;

Upon the conviction by court martial of any soldier of the crime of desertion, our Commander in Chief may, and if the court martial has been held on a foreign station, the general or other officer commanding at such station may order such soldier to serve in any regiment or corps.

43. Any soldier may be tried for desertion without reference to the time during which he may have been absent, and may thereupon be found guilty either of desertion or of absence without leave.

44. Any officer or soldier who shall advise or persuade any other officer or soldier to desert our service;—or who shall knowingly receive and entertain any deserter, and shall not immediately on discovery give notice to his commanding officer, or to our Secretary of State for War, or shall not cause such deserter to be apprehended by the civil power;—

Shall, if an *officer*, on conviction thereof before a *general* court martial, be cashiered;—and if a *soldier*, shall, on conviction thereof before a *general*, *district*, or *garrison* court martial, be liable to such punishments as such courts may award.

46. If any soldier while serving in any regiment or corps shall confess to his commanding officer that he is a deserter from some other regiment or corps, or from the militia, and evidence of the truth or falsehood of such confession cannot then be conveniently obtained, a record of such confession, signed by such commanding officer, shall be entered in the regimental books, and such soldier shall continue to do duty in the regiment or corps in which he shall then be serving, or in any other regiment or corps to which he may be transferred, until he shall be discharged, or until legal proof can be obtained of the truth or falsehood of such confession, of the making of which confession the said record, or a copy thereof purporting to bear the signature of the officer having the custody of the regimental books, shall be sufficient evidence;— and in any case where such confession shall then appear to be true, such soldier may be arraigned before a *general*, *district*, or *garrison* court

(a) Mutiny Act, 15, 50, 54; Articles of War, 33, 42, 43, 44, 46, 47, 49, 50, 136, 167.

court martial on a charge for desertion, and, if convicted, may be punished accordingly;—and where such confession shall appear to be false, such soldier may be arraigned before a *district* or *garrison* court martial on a charge for making a false statement to his commanding officer;—and he may, if convicted, be sentenced, in addition to imprisonment, with or without hard labour, to forfeiture of all advantage as to good-conduct pay, and pension on discharge, which might otherwise have accrued from his former service, and to forfeiture of any good-conduct badges, medals, decorations, and of any annuities or gratuities relating thereto;—a letter purporting to be written in reply to an inquiry respecting the truth or falsehood of such confession, and to be signed by or on behalf of the commanding officer of the regiment or corps from which such soldier confesses himself to have deserted, shall be admissible in evidence against such soldier, and shall be deemed to be legal evidence of the facts stated therein.

47. Our Commander in Chief may, and any general or other officer commanding on any foreign station may, within his command, dispense with the trial of any soldier confessing desertion, if he shall so think fit, and may thereupon order such soldier to serve in any regiment or corps, and to make good by stoppages from his pay the value of any free kit obtained by him on fraudulent re-enlistment;—and such soldier shall thereupon forfeit his service for the period between the date of the desertion stated in his confession and the date of the said order to serve, and shall not be allowed to reckon the said period as a part of the limited service for which he was enlisted or re-engaged, or for which his term of service may have been prolonged; and shall also forfeit all advantage as to good-conduct pay, and pension on discharge, which might have otherwise accrued from the length of his former service, and shall also forfeit all medals and decorations whatsoever which he may be in possession of and authorised to wear, together with any annuity or gratuity thereto appertaining;—but any such soldier, if he shall have subsequently performed good, faithful, or gallant services in our army, may, on the same being duly certified by our Commander in Chief, be eligible to be restored to the benefit of the whole or of any part of his service; and should the restoration be approved by us, our order for the same will be signified through our Secretary of State for War.

49. Every soldier shall be liable to be tried and punished for desertion from any regiment or corps into which he may have unlawfully enlisted, although he may of right belong to another regiment or corps, and be a deserter therefrom; and any number of charges for desertion may form the subject of a single arraignment.

50. Any soldier who, without leave from his commanding officer, shall absent himself from his quarters, garrison, or camp, or from his troops, company, or detachment, or who, without a pass or leave in writing from his commanding officer, shall be found one mile or upwards from the camp, shall, on conviction thereof, be punished according to the degree of the offence, by a *general* or other court martial.

If

## MUTINY ACT.

## ARTICLES OF WAR.

App., No. 2.

If any soldier shall absent himself without leave for any period not exceeding *five* days, and shall not account for the same to the satisfaction of his commanding officer, and if any soldier shall be guilty of any other offence which the commanding officer may not think necessary to bring before a court martial, the commanding officer may, in addition to any minor punishment he is authorised to award, order that such soldier shall be imprisoned for any period not exceeding *one hundred and sixty-eight* hours, with or without hard labour, or with or without solitary confinement, as the said commanding officer may think fit; — and any soldier who shall have absented himself as aforesaid may in addition to or instead of such imprisonment, or other punishment which the commanding officer has authority to inflict, be further deprived, by order of his commanding officer, of his pay for the day or days of such absence; —

Any soldier ordered by his commanding officer to suffer imprisonment or deprivation of pay (except in certain cases of fines for drunkenness in which the offence is not denied) shall, if he so request, have a right to be tried by a court martial for his offence instead of submitting to such imprisonment or deprivation.

No *regimental* court martial shall try any soldier for absence without leave, if the absence has exceeded the period of *twenty-one days*, without the permission of the general or other officer commanding the brigade, district, or garrison; — nor shall try any soldier of the regular forces for desertion.

If any soldier shall have been illegally absent from his duty for the space of *twenty-one* days, a court of inquiry of three officers shall forthwith assemble, who are hereby empowered to examine witnesses upon oath respecting the fact of such absence, and the deficiency, if any, in the articles of his kit; — and, having received proof on oath of the facts, they shall declare such absence and the period thereof, and the deficiency, if any, in the articles in his kit, and the officer commanding the corps shall enter a record of such absence, and of such deficiency in his kit, and of the declaration of such court of inquiry thereon, in the *regimental* books; — and if such soldier should not afterwards surrender or be apprehended, such record shall have the legal effect of a conviction for desertion; — and if such soldier should surrender or be apprehended after such record shall have been so entered, such record, or a copy thereof, purporting to bear the signature of the officer having the custody of the *regimental* books, shall, on the trial of such soldier, be admissible in evidence of the facts therein recorded; and on proof of the identity of the prisoner with the soldier therein mentioned, he may be found guilty of the charge or charges; — and if he be convicted of desertion, the sentence of any such court shall be inserted in the soldier's discharge.

With respect to forfeiture of ordinary pay Articles 2, 175, and 176 provide:

As to forfeiture of service towards good-conduct pay and pension, *see* Articles 170, 171, 172, and 173.

As to absence from special duty. As to parade, Art. 70.

y 3

79. Any

## MUTINY ACT.

## ARTICLES OF WAR.

*Disgraceful Conduct (a).*

79. Any officer who

Shall behave in a scandalous manner, unbecoming the character of an officer and a gentleman ;—

Shall, on conviction thereof before a *general* court martial, be cashiered.

81. Any soldier who

Shall malingering, feign, or produce disease or infirmity, —or shall wilfully do any act, —or wilfully disobey any orders, whether in hospital or otherwise, thereby producing or aggravating disease or infirmity, —or delaying his cure ;—

Or who

Shall wilfully maim or injure himself or any other soldier, whether at the instance of such other soldier or not, or cause himself to be maimed or injured by any other person, with intent thereby to render himself or such other soldier unfit for service ;—

Or who

Shall tamper with his eyes, with intent thereby to render himself unfit for service ;—

Or who

Shall steal any money or goods the property of a comrade, of a military officer, or of any military or regimental mess or band, or who shall receive any such money or goods knowing them to have been stolen ;—

Or who

Shall steal or embezzle Government money or property, or shall receive the same knowing them to have been stolen or embezzled ;—

Or who

Shall commit any other offence of a felonious or fraudulent nature ;—

Or who

Shall be guilty of any other disgraceful conduct of a cruel, indecent, or unnatural kind ;—

May, on conviction thereof before a *general*, *district*, or *garrison* court martial, be sentenced to such punishments, other than death or penal servitude, as the court may award.

*Drunkenness (b).*

76. If any officer shall be drunk on any duty under arms

He shall, on conviction thereof before a *general* court martial, be sentenced to be cashiered.

77. If any soldier shall be drunk, whether on duty or not on duty

He shall, on conviction thereof before any court martial, in addition to, or without any such other punishment, as the court may award, be liable to a fine not exceeding one pound, to be levied by stoppages from the offender's daily pay.

If any soldier shall be drunk, whether on duty or not on duty

His commanding officer may, with or without any other lawful punishment, award him to pay a fine not exceeding ten shillings, such fine to be levied by stoppages from the offender's daily pay.

Any

## MUTINY ACT.

## ARTICLES OF WAR.

App.. No. 2.

Any soldier who shall object to such award on the ground of his innocence of the offence shall, if he so request, have a right to be tried by a *district* or *garrison* court martial instead of submitting to such fine.

In levying any fine or fines for drunkenness, whether imposed by a court martial or a commanding officer, the stoppages from the offender's daily pay shall in no case exceed fourpence a day.

*Offences in relation to Prisoners (a).*

69. Any officer or soldier who, being under arrest, or in prison, shall leave or escape from his confinement before he is set at liberty by proper authority;—

Shall, if an *officer*, on conviction of any one of the aforesaid offences, before a *general* court martial, be cashiered; — and, if a *soldier*, shall, on conviction thereof before a *general*, *district*, or *garrison* court martial, be liable to such punishments as shall accord with the provisions of the Mutiny Act and with the usage of the service.

72. Any officer or soldier who

Shall not, within *twenty-four hours* after the commitment of any prisoner, or as soon as he shall be relieved from his guard or duty, give in writing the prisoner's name and crime, and the name and rank of the officer or other person who committed him to the officer commanding the garrison or regiment to whom he may be ordered to report; — or

73. Who, when in command of a guard, picquet, or patrol, shall, without proper authority, release any prisoner committed to his charge, or shall suffer him to escape; — or

74. Who shall unnecessarily detain any prisoner in confinement, without bringing him to trial;—

Shall, if an *officer*, on conviction of any one of the aforesaid offences, be liable to be cashiered,— or suffer such other punishment, according to the nature and degree of the offence, as by the judgment of a *general* court martial may be awarded;—

And if a *non-commissioned officer* or *soldier*, shall, on conviction of any of the aforesaid offences, be punished according to the nature and degree of the offence by a *general*, *district*, *garrison*, *regimental*, or other court martial.

*Offences in relation to Property (b).*

17. Any officer or soldier of Her Majesty's army, or any person employed in the War Department, or in any way concerned in the care or distribution of any money, provisions, forage, arms, clothing, ammunition, or other stores belonging to Her Majesty's army or for Her Majesty's use, who shall

Embezzle, fraudulently misapply, wilfully damage, steal, or receive the same, knowing them to have been stolen, or shall be concerned therein or connive thereat,

May be tried for the same by a general court martial, and sentenced to be kept in penal servitude for any term not less than five years, or to suffer such punishment of fine, imprisonment, with

67. Any officer or soldier who,

Being in command of any of our garrisons, forts, or barracks, shall connive at the exaction of exorbitant prices for houses or stalls let to sutlers;—or lay any duty upon, or take any fee or advantage, or be in any way interested in the sale of provisions or merchandise brought into places under his command;

Shall, if an *officer*, on conviction of any one of the aforesaid offences, before a *general* court martial be cashiered;—and, if a *soldier*, shall, on conviction thereof before a *general*, *district*, or *garrison* court martial, be liable to such punishments as shall accord with the provisions

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(a) Articles of War, 69, 72, 73, 74.

(b) Mutiny Act, 17; Articles of War, 67, 80, 81, 102.

with or without hard labour, dismissal from Her Majesty's service, reduction to the ranks if a warrant or non-commissioned officer, as such court shall think fit, according to the nature and degree of the offence.

of the Mutiny Act and with the usage of the service.

80. Any officer or soldier, or other person employed in the War Department, or in any way concerned in the care or distribution of any money, provisions, forage, arms, ammunition, clothing, or other stores belonging to our army, or for our use,

Who shall embezzle, fraudulently misapply, wilfully damage, steal, or receive the same, knowing them to have been stolen, or shall be concerned therein, or connive thereat;—

May, on conviction thereof before a *general* court martial, be sentenced to *penal servitude* for any term of years not less than five,—or to such other punishment as shall accord with the provisions of the 17th section of the Mutiny Act;—and on the trial of such offender, such court shall proceed in all particulars in accordance with the provisions of the said section;—

And such offender on conviction thereof before a *district* or *garrison* court martial, shall be liable to such punishments as the court may award.

#### 81. Any soldier who

Shall steal any money or goods the property of a comrade, of a military officer, or of any military or regimental mess or band, or who shall receive any such money or goods knowing them to have been stolen;—

Or who

Shall steal or embezzle Government money or property, or shall receive the same knowing them to have been stolen or embezzled;—

Or who

Shall commit any other offence of a felonious or fraudulent nature;

May, on conviction thereof before a *general*, *district*, or *garrison* court martial, be sentenced to such punishments, other than death or penal servitude, as the court may award.

#### 102. Any soldier who

Shall pawn, sell, lose by neglect, make away with, or wilfully spoil his arms, accoutrements or necessaries,—or any extra article of clothing or equipment that he may have been put in possession of, and ordered to wear, on the recommendation of the surgeon, for the benefit of his health;—or spoil or wilfully deface or make away with or pawn his medal granted him for service in the field, or for general good conduct by our order, or by order of the late East India Company;—or sell, lose by neglect, make away with, or illtreat his horse;

Shall, if an *officer*, on conviction of any one of the aforesaid offences, be liable to be cashiered,—or suffer such other punishment, according to the nature and degree of the offence, as by the judgment of a *general* court martial may be awarded;—and, if a *non-commissioned officer* or *soldier*, shall, on conviction of any of the aforesaid offences, be punished, according to the nature and degree of the offence, by a *general*, *district*, *garrison*, *regimental*, or other court martial.

84. Any

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*False Returns (a).*

## 84. Any officer who

Shall, through design or culpable neglect, omit or refuse to make or send a return or report;— or shall make a return or report, to us, to the Commander in Chief of our forces, to our Secretary of State for War, or to any his superior officer, authorised to call for a return or report of the state of any regiment, troop, or company, garrison, or corps under his command, knowing such return or report, or any statement therein, to be false;— or

85. Who shall make a false muster of man or horse, or shall knowingly allow or sign any muster roll, pay list, certificate, or return wherein such false statement is contained, or any duplicate thereof;— or who shall intentionally allow to be given any untrue documents, or conceal or omit the true facts directed to be stated, whereby to excuse any officer or soldier from muster or duty, by withholding the names of absent persons, or the true reasons and time of absence;— or

86. Who shall, by any false statement, certificate, or document, or omission of the true statement, attempt to obtain for any officer or soldier, or other person whatsoever, any pension, retirement, half-pay, gratuity, sale of commission, exchange, transfer, or discharge;— or

87. Any officer or soldier who shall make or be privy to the making of any false entry, alteration, or erasure in any account, description book, attestation, record, register, discharge or other document; whereby the real services, causes of discharge or disability, wounds, conduct of, or sentences of courts martial upon, any person whatsoever, shall not be truly given, or who shall wilfully omit to report or record any other facts relating thereto, which it was his duty to have done in conformity with our regulations;— or

88. Who shall intentionally give in any false return or report or statement whatsoever of arms, ammunition, clothing, money, stores, or any provisions belonging to us, or for the use of our forces;— or who shall, by any false document, be concerned in or connive at any fraudulent embezzlement of the stores aforesaid, or who shall, by producing any false certificates or vouchers or accounts, or in any other way misapply the public money for purposes other than those for which it was intended;— or

90. Any officer who shall have signed certificates, returns, or forms of accounts in blank, before the paymaster, quartermaster, or other person concerned in making up the said documents, has inserted therein the whole of the circumstances for which the officer's signature is to be a voucher;—

Shall, on conviction thereof, be liable to be cashiered,—or suffer such other punishment according to the nature and degree of the offence, as by the judgment of a *general* court martial may be awarded.

*Offences in relation to Billeting (b).*

87. If any military officer  
Shall take upon himself to quarter soldiers  
otherwise

91. Any officer or soldier who  
Shall demand billets for more than his effective

(a) Articles of War, 84, 85, 86, 87, 88, 90.

(b) Mutiny Acts, 87; Articles of War, 91, 92.



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otherwise than is limited and allowed by this Act ;—or

Shall use or offer any menace or compulsion to or upon any mayor, constable, or other civil officer, tending to deter and discourage any of them from performing any part of their duty under this Act, or tending to induce any of them to do anything contrary to their said duty ;—

Such officer shall for every such offence (being thereof convicted before any two or more justices of the county by the oath of two credible witnesses) be deemed and taken to be thereupon cashiered, and shall be utterly disabled to hold any military employment in Her Majesty's service ;—Provided that a certificate of such conviction shall be transmitted by one of the said justices to the Judge Advocate in London, who is hereby required to certify the same to the Commander in Chief and Secretary of State for the War Department, and that the said conviction be affirmed at some quarter sessions of the peace of the said county held next after the expiration of three months after such certificate of the justice shall have been transmitted as aforesaid ;—

And if any military officer

Shall take, or knowingly suffer to be taken, from any person, any money or reward for excusing the quartering of officers or soldiers, or

Shall billet any of the wives, children, men, or maid servants of any officer or soldier, in any house against the consent of the occupier,

He shall, upon being convicted thereof before a general court martial, be cashiered.

*Offences in relation to Movement of Troops (a).*

87. If any officer shall constrain any carriage to travel beyond the distance specified in the justice's warrant, or shall not discharge the same in due time for their return home on the same day, if it be practicable, except in the case of emergency for which the justice shall have given license ; or

Shall compel the driver of any carriage to take up any soldier or servant (except such as are sick), or any woman to ride therein, except in the cases of emergency as aforesaid, or shall force any constable, by threatening words, to provide saddle horses for himself or servants, or

Shall force horses from their owners, or in Ireland shall force the owner to take any loading until the same shall be first duly weighed, if the same can be done within reasonable time, or shall, contrary to the will of the owner or his servant, permit any person whatsoever to put any greater load upon any carriage than is directed by this Act,

Such officer shall forfeit for every offence any sum not exceeding five pounds, nor less than forty shillings.

*Offences in relation to Enlistment (b).*

42. Every person authorised to enlist recruits or to enrol men under any Reserve Force Acts, or to enlist men under any Militia Reserve Acts, shall first ask the person about to be so enlisted or enrolled whether he belongs to any and what force in Her Majesty's service, and also such other questions as the proper authorities may direct to be put to such persons, and in case of a recruit, shall immediately after giving him enlisting money serve him with a notice in the form ordered by the Secretary of State for the War Department to be used.

51. Every

tive men ;—or quarter wives and children or servants in houses, without the consent of the occupiers ;—or take money for freeing from billets ;—

Shall, if an *officer*, on conviction thereof before a *general* court martial, be cashiered ;—and, if a *soldier*, shall, on conviction thereof before a *general*, *district*, or *garrison* court martial, be liable to such punishments as shall accord with the provisions of the Mutiny Act and with the usage of our service.

92. Any officer or soldier who

Shall be guilty of any ill-treatment of landlords by violence, extortion, or making disturbances in billets ;—and any commanding officer who shall refuse or neglect to cause reparation to be made for such ill-treatment, after receiving proof of the justice of the complaint ;—and

94. Any officer or soldier who

Shall permit carriages pressed for baggage to be overloaded, or

Shall permit the persons attending them to be ill-treated, or to be forced to take upon their carriages (except on emergencies as provided for by law) any woman, or any soldiers, other than the sick and lame ;—or who shall refuse to certify the sums due for carriages, and the name of the corps employing them ;—

Shall, if an *officer*, on conviction of any one of the aforesaid offences, be liable to be cashiered, —or suffer such other punishment, according to the nature and degree of the offence, as by the judgment of a *general* court martial may be awarded ;—and if a *non-commissioned officer* or *soldier*, shall, on conviction of any of the aforesaid offences, be punished, according to the nature and degree of the offence, by a *general*, *district*, *garrison*, *regimental*, or other court martial.

95. Every person subject to these articles who

Shall wilfully contravene any of the provisions of the Mutiny Act, or the regulations of the service, in any matter relating to the enlisting or attesting of recruits,

May be tried for such offence before a *general*, *district*, or *garrison* court martial, and be sentenced to such punishments, other than death or penal servitude, as such court may award.

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51. Every person subject to this Act who

Shall wilfully act contrary to any of its provisions in any matter relating to the enlisting or attesting of recruits for Her Majesty's army

Shall be liable to be tried for such offence before a general, district, or garrison court martial, and to be sentenced to such punishments other than death or penal servitude as such courts may award.

*Miscellaneous Military Offences (a).*

34. Any commissioned chaplain who

Shall be guilty of misconduct or vicious behaviour derogating from the sacred character with which he is invested,

Shall, on conviction before a *general* court martial be discharged from his office.

96. Any officer or soldier who,

On application being made to him for that purpose, shall wilfully neglect or refuse to deliver over to the civil magistrate,—or to assist in the apprehension of officers and soldiers accused of crimes punishable by law;—or

97. Who shall protect any person from his creditors on the pretence of his being a soldier,—or who shall protect any soldier not actually doing duty as such in any manner not allowed by the Mutiny Act;—

Shall, if an *officer*, on conviction of any one of the aforesaid offences before a *general* court martial be cashiered;—and, if a *soldier*, shall, on conviction thereof, before a *general*, *district*, or *garrison* court martial, be liable to such punishments as such courts may award.

98. Every person subject to these articles who

Shall fight or promote a duel, or take any steps thereto, or who shall not do his best to prevent a duel,

Shall,—if an *officer*, be liable to be cashiered, or to suffer such other punishments as a *general* court martial may award;—if other than an *officer*, shall be liable to such punishments as a *general*, *district*, or *garrison* court martial may award.

100. Any officer or non-commissioned officer who shall strike or otherwise ill-treat any soldier;

Shall, if an *officer*, on conviction of any one of the aforesaid offences, be liable to be cashiered,—or suffer such other punishment, according to the nature and degree of the offence, as by the judgment of a *general* court martial may be awarded;—and, if a *non-commissioned officer* or *soldier*, shall, on conviction of any of the aforesaid offences, be punished, according to the nature and degree of the offence, by a *general*, *district*, *garrison*, *regimental*, or other court martial.

104. If any person subject to the Mutiny Act

Attempt to commit suicide,

He shall be liable to be tried by a court martial;—and, upon conviction, he shall be liable, if an *officer*, to be cashiered, and, if a *soldier*, to suffer imprisonment, with or without hard labour.

105. And all crimes not capital,—and all acts, conduct, disorders, and neglects,—which officers and soldiers, and other persons subject to these our Articles of War, may be guilty of, to the prejudice of good order and military discipline,—though

(a) Articles of War, 34, 96, 97, 98, 100, 104, 105.

though not specified in the foregoing cases, or in these our Articles of War,

Shall be taken cognizance of by courts martial, according to the nature and degree of the offence, and the offender shall suffer such punishment as the court may award.

*Offences punishable by ordinary Law (a).*

39. No person subject to this Act, having been acquitted or convicted of any crime or offence by the civil magistrate, or by the verdict of a jury, shall be liable to be again convicted for the same crime or offence by a court martial, or to be punished for the same otherwise than by cashiering in the case of a commissioned officer, or in the case of a warrant officer by reduction to an inferior class or to the rank of a private soldier by order of the Commander in Chief, or in the case of an army schoolmaster to discharge from the service, or loss of the whole or any period of his previous service reckoning towards pension on discharge by order of the Commander in Chief, or in the case of a non-commissioned officer by reduction to the ranks by order of the Commander in Chief or of the colonel, or in the militia by order of the appointed commandant of the regiment or corps.

76. Nothing in this Act contained shall be construed to extend to exempt any officer or soldier from being proceeded against by the ordinary course of law, when accused of felony, or of misdemeanour, or of any crime or offence other than the misdemeanours and offences hereinbefore mentioned;—and if any commanding officer shall neglect or refuse, on application being made to him for that purpose, to deliver over to the civil magistrate any officer or soldier under his command, or shall wilfully obstruct, neglect, or refuse to assist the officers of justice in apprehending any officer or soldier under his command, so accused as aforesaid, such commanding officer shall, upon conviction thereof in any of Her Majesty's Superior Courts at Westminster, Dublin, or Edinburgh, or in any court of record in India, be deemed to be thereupon cashiered, and shall be thenceforth utterly disabled to have or hold any civil or military office or employment in the United Kingdom of Great Britain and Ireland or in Her Majesty's service;—and a certificate of such conviction, containing the substance and effect of the indictment only, omitting the formal part, with the copy of the entry of the judgment of the court thereon, shall be transmitted to the Judge Advocate General in London.

101. Any officer or soldier, or other person subject to this Act, who shall be serving in the territories of any foreign state in India, or in any country in India, under the protection of Her Majesty, or at any place in Her Majesty's dominions in India (other than Prince of Wales Island, Singapore, or Malacca), at a distance of upwards of one hundred and twenty miles from the presidencies of Fort William, Fort Saint George, and Bombay respectively, and who shall be accused of having committed any offence which, if committed in England, would be punishable by the criminal law there, may, if the same be also punishable under the Indian penal code for the

17. Whenever any officer or soldier shall be accused of a capital crime, or of violence, or any offence against the persons or property of our subjects, punishable by the known laws of the land, the commanding officer and officers of his corps are, upon application duly made in behalf of the party injured, to use their utmost endeavours to deliver over such accused person to the civil magistrate;—and assist the officers of justice in apprehending and securing him.

143. Any officer or soldier who may be serving in any place within our dominions beyond the seas (excepting India), where there is no civil judicature in force, by our appointment, or under our authority, competent to try such offenders, or who may be serving in our garrison of Gibraltar, and who shall be accused of treason, or of any other civil offence, which, if committed in England, would be punishable by a court of ordinary criminal jurisdiction, and not by a *general* court martial appointed by the officer commanding in chief in such place as aforesaid for the time being;—and if found guilty, shall be liable, in the case of an offence which, if committed in England, would be capital, to suffer death, or such other punishment as by the sentence of such *general* court martial shall be awarded;—and in the case of any other offence, to suffer such punishment other than death as by the sentence of such *general* court martial shall be awarded;—no such punishment, nevertheless, to be of such a nature as shall be contrary to the usages of English law in regard to the punishment of offenders, or to be carried into effect until such officer commanding in chief as aforesaid shall have confirmed the same;—and in all such cases where such court martial shall have convicted any such officer or soldier of any offence punishable with death, it shall be lawful for such court martial, instead of sentencing the offender to death, to adjudge him to be kept in penal servitude for a term of not less than five years;—and we hereby reserve to ourselves the power, in all cases where a sentence of death shall have been pronounced on any officer or soldier by any general court martial as aforesaid, instead of causing such sentence to be carried into execution, to order the offender to be kept in penal servitude, or to be imprisoned, with or without hard labour, for such period of time as, on consideration of all the circumstances of the case, shall seem to us to be most just and fitting.

145. Any officer or soldier who may be serving with our forces out of our dominions, who shall be accused of treason, or of any other civil offence which, if committed in England, would be punishable by a court of ordinary criminal jurisdiction, and not by a court martial, shall be tried by a general court martial, appointed by the general or other officer having power to appoint courts martial in such place for the time being, and if found guilty shall be liable, in the case of an offence

(a) Mutiny Act, 39, 76, 101; Articles of War, 17, 143, 145.

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the time being, be tried by a general court martial to be appointed by the general or other officer commanding in chief in such place for the time being, and if found guilty, shall be liable to be sentenced by such court martial to suffer such punishment as may legally be awarded by any of Her Majesty's courts of criminal jurisdiction within Her Majesty's dominions of India in respect of a like offence committed within the jurisdiction of such last-mentioned court;—but no sentence of a general court martial for any such offence shall be carried into execution until the same shall have been duly confirmed;—and it shall be lawful for such general or other officer commanding in chief as aforesaid, to confirm the sentence of any such general court martial;—and such general or other officer as aforesaid, may, if he shall think fit, suspend, mitigate, or remit the sentence;—or, in the case of a sentence of penal servitude, may commute the same to imprisonment, with or without hard labour, for such period as to him shall seem fit;—Provided always, that in all cases wherein a sentence of death or penal servitude shall have been awarded by any such general court martial held for the trial of a commissioned officer, or where a sentence of death shall have been awarded by any such general court martial, held for the trial of any person, subject to this Act, other than a commissioned officer, such sentence shall not be carried into execution until it shall have been duly approved by the Governor General in Council, or Governor in Council of the presidency in the territories subordinate to which the offender shall have been tried;—Provided also, that any person who may have been so tried as aforesaid, shall not be tried for the same offence by any other court whatsoever.

offence which, if committed in England, would be capital, to suffer death, or such other punishment as by the sentence of such general court martial shall be awarded;—and in the case of any other offence to suffer such punishment other than death as by the sentence of such general court martial shall be awarded;—no such punishment, nevertheless, to be of such a nature as shall be contrary to the usages of English law in regard to the punishment of offenders, or to be carried into effect until confirmed by the general or other officer by whom or under whose authority such court martial was appointed;—and in all cases where such court martial shall have convicted any such officer or soldier of any offence punishable with death, it shall be lawful for such court martial, instead of sentencing such offender to death, to adjudge him to be kept in penal servitude for a term of not less than five years;—and in all cases where such court martial shall sentence any officer or soldier to death, it shall be lawful for the general or other officer commanding our said forces in chief, by whose authority from us such court martial was assembled, instead of causing such sentence to be carried into execution, to order such officer or soldier to be kept in penal servitude, or to be imprisoned, with or without hard labour, for such period of time not exceeding two years as to him shall seem meet:—And in the case of a commissioned officer no sentence of death or penal servitude shall be carried into effect until confirmed by the officer commanding in chief the said forces.——But as it may be expedient to hold detachment general courts martial for the trial of such of the civil offences aforesaid as are provided for in the 12th section of the Mutiny Act, the provisions of this article shall not be deemed to affect the jurisdiction of detachment general courts martial in such cases;—and those courts shall in such cases have the same powers as are granted by this article to general courts martial;—and the general or other officer commanding our said forces in chief as aforesaid shall have the same powers as regards detachment general courts martial as are conferred on him by this article in regard to general courts martial.

*Redress of Wrongs (a).*

100. If any officer belonging to Her Majesty's Indian forces shall think himself wronged by the officer commanding the regiment, and shall, upon due application made to him, not receive the redress to which he may consider himself entitled, he may complain to his commander in chief in order to obtain justice, who is hereby required to examine into such complaint and thereupon report to the Government of the presidency to which such officer belongs, in order to receive the further directions of such Government.

12. If an officer shall think himself wronged by his commanding officer, and shall, upon due application made to him, not receive the redress to which he may consider himself to be entitled;—he may complain to the general commanding in chief of our forces, in order to obtain justice;—who is hereby required to examine into such complaint;—and either by himself, or by our Secretary of State for War, to make his report to us thereupon, in order to receive our further directions.

13. If a non-commissioned officer or soldier shall think himself wronged in any matter affecting his pay or clothing by his captain, or other officer commanding the troop or company to which he belongs, he is to complain thereof to the commanding officer of the regiment, who is hereby required to summon a *regimental* court of inquiry for the purpose of determining whether such complaint

plaint is just;—from the decision of which court of inquiry either party may, if he thinks himself still aggrieved, appeal to a *general* court martial;—and such court shall hear and determine the merits of the appeal, and after determining the same, and after allowing the appellant to show cause to the contrary, by himself, and by witnesses, if any, may either confirm the appeal or dismiss it, without more, or may, if it shall think fit, pronounce such appeal groundless and vexatious, and may thereupon sentence such appellant to such punishment as a general court martial is competent to award;—Provided that no stoppage of pay in respect of barrack damage duly assessed by a court of inquiry shall give any non-commissioned officer or soldier a right of appeal to a general or other court martial.

*Punishments (a).*

8. Every general court martial shall have power to sentence any officer or soldier to suffer death, penal servitude, imprisonment, forfeiture of pay or pension, or any other punishment which shall accord with the usage of the service;—no sentence of penal servitude shall be for a period of less than five years;—and no sentence of imprisonment shall be for a period longer than two years.

23. Any court martial may sentence any soldier to corporal punishment while on active service in the field, or on board any ship not in commission, for mutiny, insubordination, desertion, drunkenness on duty or on the line of march, disgraceful conduct, or any breach of the Articles of War; and no sentence of corporal punishment shall exceed fifty lashes.

26. A general, garrison, or district court martial may sentence any soldier to imprisonment, with or without hard labour, and with or without solitary confinement, but such solitary confinement shall not exceed the periods prescribed by the Articles of War.

27. Any regimental or detachment court martial may sentence any soldier to imprisonment, with or without hard labour, for any period not exceeding forty-two days, and with or without solitary confinement not exceeding the periods prescribed by the Articles of War.

125. A *general* court martial may sentence a commissioned officer to loss of army or regimental rank, in addition to any reprimand or other punishment which it may award, by reducing him, if under the rank and degree of a field officer, to the bottom of or to any other place on the list of the regimental rank in which he may be serving;—or if a superior officer, to the last or any other place on the list of the army rank in which he may be serving;—and in all cases where the officer so sentenced to loss of rank holds army as well as regimental rank, the loss of rank may be inflicted in either or both of those ranks;—and such court may sentence such officer to be imprisoned, with or without hard labour, in any case in which the court shall be authorised by law, and shall deem it necessary, to adjudge such punishment;—but it shall not have power to sentence such officer to be suspended from doing duty, or from pay. With respect to officers of our Indian staff corps, a general court martial may sentence any such officer to forfeit all or any part of his army or staff service, or all or any part of both.

*Penal Forfeitures and Stoppages (b).*

17. Any officer or soldier of Her Majesty's army, or any person employed in the War Department, or in any way concerned in the care or distribution of any money, provisions, forage, arms, clothing, ammunition, or other stores belonging to Her Majesty's army or for Her Majesty's use, who shall embezzle, fraudulently misapply, wilfully damage, steal, or receive the same, knowing them to have been stolen, or shall be concerned therein or connive thereat, may be tried for the same by a general court martial, and sentenced to be kept in penal servitude for any term not less than five years, or to suffer such punishment of fine, imprisonment, with or without hard labour, dismissal from Her Majesty's service, reduction to the ranks if a warrant or non-commissioned officer, as such court shall think fit, according to the nature and degree of

50. Any soldier who shall have absented himself without leave for any period not exceeding five days, and shall not account for the same to the satisfaction of his commanding officer, may in addition to or instead of such imprisonment, or other punishment which the commanding officer has authority to inflict, be further deprived, by order of his commanding officer, of his pay for the day or days of such absence.

Any man of the Army Hospital Corps who may for any misconduct or neglect of duty as hospital orderly or otherwise, be awarded by his commanding officer confinement to barracks, shall be subjected to a stoppage of eight-pence, the sum issued in lieu of rations, for each day of such confinement.

Any soldier ordered by his commanding officer to suffer imprisonment or deprivation of pay

(a) Mutiny Act, 8, 23; Article of War, 125.

(b) Mutiny Act, 17, 50; Articles of War, 50, 77, 130, 131, 132, 133, 134, 170, 171, 172, 174, 175, 176, 177, 178, 179.

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of the offence;—and every such offender shall, in addition to any other punishment, make good, at his own expense, the loss and damage sustained, and in every such case the court is required to ascertain by evidence the amount of such loss or damage, and to declare by their sentence that such amount shall be made good by such offender; and the loss and damage so ascertained as aforesaid shall be a debt to Her Majesty, and may be recovered in any of Her Majesty's courts at Westminster or in Dublin, or the Court of Exchequer in Scotland, or in any court in Her Majesty's colonies, or in India, where the person sentenced by such court martial shall be resident, after the said judgment shall be confirmed and made known, or the offender, if he shall remain in the service, may be put under stoppages not exceeding one-half of his pay and allowances until the amount so ascertained shall be recovered.

50. If any man while belonging to any regiment or corps of the regular, reserve, or auxiliary forces, shall, without being discharged by the proper authorities therefrom, enlist or be enrolled, or attempt to enlist or be enrolled, in any regiment or corps, whether of the regular, reserve, or auxiliary forces, he shall be liable to be tried before a court martial on a charge for desertion;

But it shall be lawful for the Secretary of State for the War Department to give such general directions as may from time to time appear to him necessary for placing any man who confesses himself to be a militiaman under stoppage of one penny a day of his pay for eighteen calendar months, in lieu of his being tried by court martial;

And in the case of a militiaman who shall have belonged to the Militia Reserve at the time of his attestation for placing him under a further stoppage of one penny a day for two hundred and forty days, and further to give general directions as to the manner in which such stoppages shall be applied, and whether, on making good the same, the man shall be returned to his militia regiment or be deemed to be a soldier in the same manner as if he had not been a militiaman at the time of his attestation.

Provided that every soldier who while belonging to a militia regiment enlisted in Her Majesty's army, whether such enlistment took place before or after the passing of the Mutiny Act, 1860, shall reckon service towards the performance of his limited engagement from the date of his attestation.

Provided also, that any such soldier shall not reckon service for pension until the day on which his engagement for the militia would have expired.

But if any such soldier shall subsequently to his enlistment have rendered long, faithful, or gallant service, the Secretary of State for War may, upon the special recommendation of the Commander in Chief, order that he may reckon service for pension from the date of his attestation.

If any non-commissioned officer of the Volunteer permanent staff enlists in Her Majesty's army he may be tried and punished as a deserter, but if he confesses his desertion the Secretary of State for the War Department, instead of causing him to be tried and punished as a deserter, may

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pay (except in certain cases of fines for drunkenness in which the offence is not denied) shall, if he so request, have a right to be tried by a court martial for his offence instead of submitting to such imprisonment or deprivation.

77. If any soldier shall be drunk, whether on duty or not on duty, he shall, on conviction thereof before any court martial, in addition to, or without any such other punishment as the court may award, be liable to a fine not exceeding one pound, to be levied by stoppages from the offender's daily pay.

If any soldier shall be drunk, whether on duty or not on duty, his commanding officer may, with or without any other lawful punishment, award him to pay a fine not exceeding ten shillings, such fine to be levied by stoppages from the offender's daily pay. Any soldier who shall object to such award on the ground of his innocence of the offence shall, if he so request, have a right to be tried by a *district or garrison* court martial instead of submitting to such fine.

In levying any fine or fines for drunkenness, whether imposed by a court martial or a commanding officer, the stoppages from the offender's daily pay shall in no case exceed fourpence a day.

130. In addition to any other punishment which the court may award, a court martial may further sentence any offender to be put under stoppages of pay until he shall have made good—

Any money or articles issued to him in respect of his fraudulent enlistment, or by reason of any fraudulent misrepresentation or concealment on his part:

Any loss or damage occasioned by him in any instance of disgraceful conduct:

Any loss or destruction of, or damage, or injury to any property whatsoever occasioned by his wilful or negligent misconduct:

Any medal or decoration for service in the field or for general good conduct, which may have been granted to him by our order, or any medal or decoration which may have been granted to him by any foreign power, which medal or medals he may have been authorised to wear, or may have made away with or pawned:

Any loss, destruction, or damage of his horse, arms, clothing, instruments, equipments, accoutrements, or regimental necessities;—or of those of any officer or soldier;—or of any extra article of clothing or equipment that he or any other soldier may have been put in possession of and ordered to wear on the recommendation of the surgeon:

Any expense necessarily incurred by his drunkenness or other misconduct.

131. Except in the case of the loss, destruction, or damage of any arms, clothing, instruments, equipments, accoutrements, or regimental necessities, in which case the court may by its sentence direct that the said stoppages shall continue till the cost of replacing the same be made good, the amount of any loss, destruction, damage, or expense shall be ascertained by evidence, and the offender shall be placed under stoppages for such an amount only as shall be proved to the satisfaction of the court.

132. So much only of the pay of the soldier may

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cause him to be returned to his service on the Volunteer permanent staff, to be there put under stoppages from his pay until he has repaid the amount of any bounty received by him and the expenses attending his enlistment, and also the value of any arms, &c., issued to him while on the Volunteer permanent staff, and not duly delivered up by him;

Or may cause him to be held to his service in Her Majesty's army, with a direction, if it seems fit, that his time of service therein shall not be reckoned for pension until the time when his engagement on the Volunteer permanent staff would have expired;

And may further cause him to be put under stoppages of one penny a day of his pay until he has repaid the expense attending his engagement or attestation on the Volunteer permanent staff, and also the value of any arms, clothing, or appointments issued to him while on the Volunteer permanent staff, and not duly delivered up by him.

The sixth section of the Army Enlistment Act, 1867, and the twelfth section of the Army Enlistment Act of 1870, are hereby repealed.

In reckoning the service of a soldier, for the purpose of discharge under either of the above-named Acts, all periods of time shall be excluded during which he has been absent from his duty for any of the following causes:—

Imprisonment under sentence of a civil court or a court martial, or detention in respect of trial for an offence of which he is afterwards convicted, desertion or absence without leave exceeding five days or as a prisoner of war, unless it appear to the satisfaction of a court martial to be summoned on his rejoining Her Majesty's service, that he was not taken prisoner through his own wilful neglect of duty, and that he rejoined as soon as he could and ought to have done.

60. No Secretary of State for the War Department, paymaster general of the army, paymaster, or any other officer whatsoever, or any of their under officers, shall receive any fees or make any deductions whatsoever out of the pay of any officer or soldier in Her Majesty's army, or from their agents, which shall grow due from and after the twenty-fifth day of April one thousand eight hundred and seventy-six, other than the usual deductions, or such other necessary deductions as shall from time to time be authorised or required by Her Majesty's Regulations or Articles of War, or by statute twenty-six and twenty-seven Victoria, chapter sixty-five, section eight (Volunteer Act), or by Her Majesty's order signified by the Secretary of State for the War Department; and every paymaster or other officer who having received any officer's or soldier's pay shall unlawfully detain the same for the space of one month, or refuse to pay the same when it shall become due, according to the several rates and agreeably to the several regulations established by Her Majesty's orders, shall, upon proof thereof before a court martial, be discharged from his employment, and shall forfeit one hundred pounds, and the informer, if a soldier, shall, if he demand it, be discharged from any further service.

99. In India any civil court, or court of small causes, or any military court of requests may, on finding

may be stopped and applied as shall, after satisfying the charges for messing, and washing, leave him a residue of at least one penny a day.

133. When an offender is put under stoppages for making away with or pawning any medal or decoration, the amount shall be credited to the public, but the medal or decoration in question shall not be replaced except under special circumstances, to be determined by the Commander in Chief, with the concurrence of our Secretary of State for War.

134. When any person subject to these articles has been sentenced by a court martial to stoppages of pay, it shall be lawful for our Commander in Chief, with the concurrence of our Secretary of State for War, or for the Commander in Chief of our forces in India, with the concurrence of the Government of India, or for the Commander in Chief of our forces in each of the Presidencies in India, with the concurrence of the local government, to remit the whole or any portion of such stoppages in any case where such remission may appear to be conducive to the good of our service.

170. No soldier shall be entitled to pay or to reckon service towards pay or pension when in confinement under a sentence of any court, or during any absence from duty by commitment or confinement as a deserter by confession, or under any charge on which he shall be afterwards convicted, either by court martial or by any ordinary criminal jurisdiction, or whilst in confinement for debt.

171. No soldier shall be entitled to pay, or to reckon service towards pay or pension, during the period of his absence as a prisoner of war;—but upon rejoining our service due inquiry shall be made by a court martial, and unless it shall be proved to the satisfaction of such court that the said soldier was taken prisoner through wilful neglect of duty on his part, or that he had served with, or under, or in some manner aided the enemy, or that he had not returned as soon as possible to our service, he may thereupon be recommended by such court to receive either the whole of such arrears of pay or a proportion thereof, and to reckon service during his absence.

172. Any soldier who enlisted, re-enlisted, or re-engaged *subsequently to the passing of the Army Enlistment Act of 1867, or subsequently to its promulgation in general orders at a foreign station*, and has been imprisoned by order of his commanding officer, shall forfeit his pay and service for any day or days during which he shall have been so imprisoned;—subject, however, to the right of appeal given in such cases by these articles.

174. Any soldier shall be liable,—at the discretion of his commanding officer, subject, however, to the right of appeal given in such cases by these articles,—to forfeit his pay for any day or days, not exceeding five, during which he shall have been absent without leave.

175. Our Secretary of State for War may order or withhold the payment of the whole or of any part of the pay of any officer or soldier which by these articles has been rendered subject to forfeiture by reason of absence from duty for any of the causes aforesaid.

176. Our Secretary of State for War may also order the forfeiture of the pay of any officer or the

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finding any debt or damage in actions within the cognizance of such court, direct specially that the whole or any part of such debt or damage shall be stopped and paid over to the plaintiff out of any part not exceeding one-half of any pay or allowances, or out of any other public money, which may be coming to the defendant in the current or any future month or months.

the pay and service of any soldier for any period during which such officer or soldier shall be without leave, or improperly absent from his corps and from his duty.

177. Our Secretary of State for War may also withhold a portion, not exceeding sixpence, of the daily pay of a non-commissioned officer who is not below the rank of serjeant, and not exceeding threepence of the daily pay of any other soldier, if it shall appear to his satisfaction that such soldier has deserted his wife or any of his legitimate children under fourteen years of age, or left them in destitute circumstances without reasonable cause;—and our Secretary of State may allot the pay thus withheld to the maintenance of such wife or children in such manner as he may think fit.

178. In case of any doubt whatever as to the proper issue of pay, it may be withheld until our orders respecting it shall have been signified by our Secretary of State for War.

179. If any soldier being on board ship commits any act of misconduct, his commanding officer may deprive him, for a period not exceeding twenty-eight days, of his ration of wine or spirits or malt liquor, or of his ration of sugar and tea, or any other substitute issuable to him in lieu of such ration of wine or spirits or malt liquor;—or may sentence such soldier, if he elect to take up neither his ration of wine or spirits or malt liquor, or his ration of sugar and tea, or any substitute issuable to him in lieu thereof, to forfeit one penny a day of his pay for a period not exceeding twenty-eight days.

*Forfeiture of Pay, Service, Medals, Annuities, Gratuities, Pensions, &c. (a.)*

46. If a soldier, while serving in any regiment or corps, shall confess to his commanding officer that he is a deserter from some other regiment or corps, or from the militia, and he may, if convicted, be sentenced, in addition to imprisonment, with or without hard labour, to forfeiture of all advantage as to good conduct pay, and pension on discharge, which might otherwise have accrued from his former service, and to forfeiture of any good conduct badges, medals, decorations, and of any annuities or gratuities relating thereto.

47. Our Commander in Chief may, and any general or other officer commanding on any foreign station may, within his command, dispense with the trial of any soldier confessing desertion, if he shall so think fit, and may thereupon order such soldier to serve in any regiment or corps, and to make good by stoppages from his pay the value of any free kit obtained by him on fraudulent re-enlistment;—and such soldier shall thereupon forfeit his service for the period between the date of the desertion stated in his confession and the date of the said order to serve, and shall not be allowed to reckon the said period as a part of the limited service for which he was enlisted or re-engaged, or for which his term of service may have been prolonged; and shall also forfeit all advantage as to good conduct pay, and pension on discharge which might have otherwise accrued from the length of his former service, and shall also forfeit all medals and decorations whatsoever

(a) Articles of War, 46, 47, 117, 168, 169, 170, 171, 172, 173, 174, 175, 176, 177, 178, 179.



whatsoever which he may be in possession of and authorised to wear, together with any annuity or gratuity thereto appertaining;—but any such soldier, if he shall have subsequently performed good, faithful, or gallant services in our army, may, on the same being duly certified by our Commander in Chief, be eligible to be restored to the benefit of the whole or any part of his service, and should the restoration be approved by us, our order for the same will be signified through our Secretary of State for War.

Any *general, district, or garrison court martial* may, in addition to any other punishment which such court may award, sentence any offender to all or any of the following forfeitures:

To forfeit absolutely or for any period not less than eighteen months any good conduct badge or any good conduct pay which such offender may have earned by past service:

To forfeit any annuity, gratuity, medal, or decoration which may have been granted to him:

To forfeit any advantage as to pension which he may have earned by past service:

To forfeit all right to good conduct pay and to pension on discharge, whether in respect of past or future service:

Such court may also, in addition to any other lawful punishment, sentence any offender to be discharged from our service with ignominy.

168. Every soldier found guilty by a court martial of the following offences:—

Desertion:

Wilfully maiming or injuring himself or any other soldier, whether at the instance of such other soldier or not,—or causing himself to be maimed or injured by any other person,—with intent thereby to render himself, or such other soldier, unfit for service:

Tampering with his eyes, with intent thereby to render himself unfit for service:

Such finding having been confirmed;

And every soldier who may have been sentenced to penal servitude,—or who has been discharged with ignominy;

And every soldier who has been found guilty of felony in any court of ordinary criminal jurisdiction in England or Ireland,—or of any crime or offence in any court of criminal judicature in any part of the United Kingdom, or in any dominion, territory, colony, settlement, or island belonging to or occupied by Her Majesty out of the United Kingdom,—which would, if committed in England, amount to felony—unless the Secretary of State for War shall otherwise direct;

Shall thereupon forfeit all advantage as to good conduct pay, and pension on discharge, which might have otherwise accrued from the length of his former service;

Also, all medals and decorations whatsoever which he may be in possession of and authorised to wear, together with the annuity or gratuity, if any, thereto appertaining.

169. Any soldier who shall have forfeited the whole or any part of his service towards pay and pension, either upon conviction or sentence as aforesaid, or by sentence of a court martial, or upon his trial for desertion being dispensed with, may, if he shall have subsequently performed good, faithful, or gallant services in our army, on the same being duly certified by our Commander in

## MUTINY ACT.

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in Chief, be eligible to be restored to the benefit of the whole or of any part of his service; and should the restoration be approved by us, our order for the same will be signified to our Commander in Chief through our Secretary of State for War.

170. No soldier shall be entitled to pay or to reckon service towards pay or pension when in confinement under a sentence of any court, or during any absence from duty by commitment or confinement as a deserter by confession, or under any charge on which he shall be afterwards convicted, either by court martial or by any court of ordinary jurisdiction.

171. No soldier shall be entitled to pay, or to reckon service towards pay or pension, during the period of his absence as a prisoner of war; but upon rejoining our service due inquiry shall be made by a court martial, and unless it shall be proved to the satisfaction of such court that the said soldier was taken prisoner through wilful neglect of duty on his part, or that he had served with, or under, or in some manner aided the enemy, or that he had not returned as soon as possible to our service, he may thereupon be recommended by such court to receive either the whole of such arrears of pay or a proportion thereof, and to reckon service during his absence.

172. Any soldier who shall be convicted of desertion shall forfeit his pay and service for the day or days during which he was in a state of desertion, and any soldier *who enlisted, re-enlisted, or re-engaged subsequently to the passing of the Army Enlistment Act of 1867, or subsequently to its promulgation in general orders at a foreign station*, shall, if convicted, also forfeit his pay and service for the day or days of his absence exceeding five without leave.

173. Any soldier who has been imprisoned by his commanding officer shall forfeit his pay for any day or days during which he shall have been so imprisoned; subject, however, to the right of appeal given in such cases by these articles.

174. Any soldier shall be liable,—at the discretion of his commanding officer, subject, however, to the right of appeal given in such cases by these articles,—to forfeit his pay for any day or days, not exceeding five, during which he shall have been absent without leave.

175. Our Secretary of State for War may order or withhold the payment of the whole or of any part of the pay of any officer or soldier which by these articles has been rendered subject to forfeiture by reason of absence from duty for any of the causes aforesaid.

176. Our Secretary of State for War may also order the forfeiture of the pay of any officer or the pay and service of any soldier for any period during which such officer or soldier shall be absent without leave, or improperly absent from his corps and from his duty.

177. Our Secretary of State for War may also withhold a portion, not exceeding sixpence, of the daily pay of a non-commissioned officer who is not below the rank of serjeant, and not exceeding threepence of the daily pay of any other soldier, if it shall appear to his satisfaction that such soldier has deserted his wife or any of his legitimate children under 14 years of age, or left them in destitute circumstances without reasonable cause;—and our Secretary of State may

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allot the pay thus withheld to the maintenance of such wife or children in such manner as he may think fit.

178. In case of any doubt whatever as to the proper issue of pay, it may be withheld until our orders respecting it shall have been signified by our Secretary of State for War.

179. If any soldier being on board ship commits any act of misconduct, his commanding officer may deprive him, for a period not exceeding 28 days, of his ration of wine or spirits or malt liquor, or of his ration of sugar and tea, or any other substitute issuable to him in lieu of such ration of wine or spirits or malt liquor; — or may sentence such soldier, if he elect to take up neither his ration of wine or spirits or malt liquor, or his ration of sugar and tea, or any substitute issuable to him in lieu thereof, to forfeit one penny a day of his pay for a period not exceeding 28 days.

#### *Jurisdiction (a).*

7. Any person subject to this Act who shall, in any part of Her Majesty's dominions or elsewhere, commit any of the offences for which he may be liable to be tried by court martial by virtue of this Act or the Articles of War, may be tried and punished for the same in any part of Her Majesty's dominions or in any other place whereto he may have come or where he may be after the commission of the offence, as if the offence had been committed where such trial shall take place.

97. Provided always, that no person shall be liable to be tried or punished for any offence against any of the said Acts or Articles of War which shall appear to have been committed more than three years before the date of the warrant for such trial, unless the person accused, by reason of his having absented himself, or of some other manifest impediment, shall not have been amenable to justice within that period, in which case such person shall be liable to be tried at any time not exceeding two years after the impediment shall have ceased.

191. Whenever any of our forces shall be embarked on board our ships of war or any other ships which may have been regularly commissioned by us, and which may be employed in the transport of our troops; — our will and pleasure is, that the officers and soldiers of such forces from the time of embarkation on board any ship as above described, shall strictly conform themselves to the laws and regulations established for the government and discipline of the said ship, and shall consider themselves, for these necessary purposes, under the command of the senior officer of the particular ship, as well as of the superior officer of the fleet (if any) to which such ship belongs.

## PART II.

### SUPPLEMENTAL.

#### 40 VICTORIA.

##### CHAPTER 7.

*An Act for punishing Mutiny and Desertion, and for the better Payment of the Army and their Quarters.*

[24th April 1877.]

WHEREAS the raising or keeping a standing army within the United Kingdom of Great Britain and Ireland in time of peace, unless it be with the consent of Parliament, is against law :

And whereas it is adjudged necessary by Her Majesty, and this present Parliament, that a body of forces should be continued for the safety of the

(a) Mutiny Act, 7, 97 ; Article of War, 191.

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the United Kingdom, and the defence of the possessions of Her Majesty's Crown, and that the whole number of such forces should consist of one hundred and thirty-three thousand seven hundred and twenty men, including those to be employed at the depôts in the United Kingdom of Great Britain and Ireland for the training of recruits for service at home and abroad, but exclusive of the numbers actually serving within Her Majesty's Indian possessions:

And whereas no man can be forejudged of life or limb, or subjected in time of peace to any kind of punishment within this realm by martial law, or in any other manner than by judgment of his peers, and according to the known and established laws of this realm; — yet nevertheless it being requisite, for the retaining all the before-mentioned forces, and other persons specified in this Act in their duty, that an exact discipline be observed, and that soldiers who shall mutiny or stir up sedition, or shall desert Her Majesty's service, or be guilty of crimes and offences to the prejudice of good order and military discipline, be brought to a more exemplary and speedy punishment than the usual forms of the law will allow:

Be it therefore enacted by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same as follows:

*Power to make Articles of War (a).*

1. It shall be lawful for Her Majesty to make Articles of War for the better government of Her Majesty's army, which articles shall be judicially taken notice of by all judges and in all courts whatsoever; — and copies of the same, printed by the Queen's printer, shall, as soon as may be after the same shall have been made and established by Her Majesty, be transmitted by Her Majesty's Secretary of State for the War Department to the judges of Her Majesty's superior courts at Westminster, Dublin, and Edinburgh respectively, and also to the governors of Her Majesty's dominions abroad: —

Provided that no person within the United Kingdom of Great Britain and Ireland, or within the British Isles, shall by such Articles of War be subject to suffer any punishment extending to life or limb, or to be kept in penal servitude, except for crimes which are by this Act expressly made liable to such punishments as aforesaid;

Or shall be subject, with reference to any crimes made punishable by this Act, to be punished in any manner which shall not accord with the provisions of this Act:

Provided also, that nothing in this Act contained shall in any manner prejudice or affect any Articles of War or other matters made, enacted, or in force, or which may hereafter be made, enacted, or in force under the authority of the Government of India, respecting officers or soldiers or followers in Her Majesty's Indian Army, being natives of India; —

And

188. In construing these articles, the word "regiment" may be deemed to include other branches of the service than those which are strictly regimental, and the provisions relating to regiments may be applied to such other branches; — the words "Commander in Chief" shall be taken to include the field marshal or other officer commanding in chief our forces for the time being; the word "month" shall be taken to mean "lunar month," and the word "year" to mean "calendar year;" the word "district" shall in India be deemed to include a division, field force, or district directly subject to the command of the general commanding in chief the troops of the presidency; "one penny" shall in India be construed to mean "eight pies."

189. No person subject to the Mutiny Act shall be sentenced to suffer any punishment extending to life or limb, or to be kept in penal servitude, by virtue of these our Articles of War, except for such crimes as are expressly declared by the Mutiny Act to be so punishable.

(a) Mutiny Act, 1; Article of War, 189.

And on the trial of all offences committed by any such native officer or soldier or follower, reference shall be had to the Articles of War framed by the Government of India for such native officers, soldiers, or followers, and to the established usages of the service.

*Application of Act and Articles of War (a).*

2. All the provisions of this Act, and any Articles of War made in pursuance of this Act, shall apply to—

(1.) All persons who are or shall be commissioned or in pay as an officer, whether of the regular forces or the militia;—and

(2.) Who are or shall be listed or in pay as a non-commissioned officer or soldier;—and

(3.) To all warrant officers;—and

(4.) To all persons employed on the recruiting service receiving pay;—and

(5.) All pensioners receiving allowances in respect of such service;—and

(6.) To persons who are or shall be hired to be employed in the royal artillery, royal engineers, and to master gunners;—and

(7.) To conductors of stores;—and

(8.) To the corps of royal military surveyors and draftsmen;—and

(9.) To all officers and persons who are or shall be serving in the commissariat and ordnance store departments;—and

(10.) To officers and soldiers serving in the army hospital corps, or the army service corps;—and

(11.) To persons in the War Department, who are or shall be serving with any part of Her Majesty's army at home or abroad, under the command of any commissioned officer;—and

(12.) (Subject to and in accordance with the provisions of an Act passed in the thirtieth and thirty-first years of the reign of Her present Majesty, chapter one hundred and ten), to any out-pensioners of the Royal Hospital, Chelsea, who may be called out on duty in aid of the civil power, or for master or inspection, or who having volunteered their services for that purpose shall be kept on duty in any fort, town, or garrison;—and

(13.) To all civil officers who are or shall be employed by or act under the Secretary of State for War at any of Her Majesty's establishments in the Islands of Jersey, Guernsey, Alderney, Sark, and Man, and the islands thereto belonging, or at foreign stations;—and

(14.) All the provisions of this Act shall apply to all persons belonging to Her Majesty's Indian forces who are or shall be commissioned or in pay as officers, or who shall be listed or in pay as non-commissioned officers or soldiers, or who are or shall be serving or hired to be employed in the artillery or any of the trains of artillery, or as master gunners or gunners, or as conductors of stores, or who are or shall be serving in the department of engineers, or in the corps of sappers and miners, or pioneers, or as military surveyors or draftsmen, or in the ordnance

190. The officers and soldiers of any troops, being mustered and in pay abroad, which are or shall be raised or serving in any of our dominions abroad or in countries or places in possession of or occupied by our subjects or any of our forces;—shall at all times, and in all places, when joined or acting in conjunction with our forces;—or under the command of any officer having a commission immediately from us;—be subject to these our Articles of War, and shall be liable to be tried by courts-martial, in like manner as our forces are.

191. Whenever any of our forces shall be embarked on board our ships of war or any other ships which may have been regularly commissioned by us, and which may be employed in the transport of our troops;—our will and pleasure is, that the officers and soldiers of such forces, from the time of embarkation on board any ship as above described, shall strictly conform themselves to the laws and regulations established for the government and discipline of the said ship, and shall consider themselves, for these necessary purposes, under the command of the senior officer of the particular ship, as well as of the superior officer of the fleet (if any) to which such ship belongs.

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ordnance or public works or commissariat departments ;—and

(15.) To all storekeepers and other civil officers employed under the ordnance ;—and

(16.) To all veterinary surgeons, medical storekeepers, apothecaries, hospital stewards, and others serving in the medical department of the said forces ;—and

(17.) To all licensed suttlers, and all followers or of any of the said forces:

Provided that nothing in this Act contained shall extend to affect any security which has been or shall be given by any officers, or their sureties, for the due performance of their respective offices, but that all such securities shall be and remain in full force and effect:

And this Act, and any Articles of War made in pursuance of this Act, shall apply ;—to

(17.) All persons receiving pay as members of the permanent staff of any militia, yeomanry, or volunteer regiment or corps ;—and

(18.) To all persons being enrolled in the militia who are attached for purposes of instruction, or otherwise, to a regiment or body of troops of the regular forces ;—and

(19.) To all militia recruits and other persons in the militia receiving pay during the period of preliminary training, when the militia battalions to which they belong are not for the time being out for training and exercise ;—and

(20.) To any officer of the yeomanry or volunteer forces, whether in receipt of pay or otherwise, during and in respect of the time when with his own consent he may be attached to or doing duty with any body of troops then subject to this Act, whether of the regular, reserve, or auxiliary forces, or to any such officer when ordered on duty by the military authorities ;—and

(21.) To all men enrolled in the reserve force when called out for training or exercise, or when kept on duty having volunteered their services, or when called out in aid of the civil power, or when called out on permanent service under Her Majesty's proclamation ;—and

(22.) To all men enrolled in the army reserve during and in respect of other periods to the extent and in the manner provided in the one hundred and seventh section of this Act:

And all such persons shall, during such periods, and in respect of offences committed during such periods, be deemed to be part of the regular forces for the purposes of this Act in respect of billeting, discipline, trial, and punishment.

4. All officers and soldiers of any troops mustered and in pay, which shall be raised and serving in any of Her Majesty's dominions abroad, or in places in possession of or occupied by Her Majesty's subjects under the command of any officer having any commission immediately from Her Majesty, shall be subject to the provisions of this Act and of Her Majesty's Articles of War in like manner as Her Majesty's other forces are ;—and if such officers and soldiers,

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having been made prisoners, be sent into Great Britain or Ireland, although not allowed to serve therein, all the provisions of this Act in regard to billeting soldiers shall apply to such officers and soldiers.

5. Nothing in this Act contained shall be construed to extend to any militia forces or yeomanry or volunteer corps in Great Britain or Ireland, or to the reserve force provided for by the Reserve Force Act, 1867, or to the reserve force provided for by the Militia Reserve Act, 1867, excepting as stated in the second section of this Act and as hereinafter enacted, or where by any Act for regulating any of the said forces or corps the provisions contained in any Act for punishing mutiny and desertion are or shall be specifically made applicable to such forces or corps.

*Application of certain provisions of the Mutiny Act to the Channel Isles (a)*

3. This Act shall extend to the Islands of Jersey, Guernsey, Alderney, Sark, and Man, and the islands thereto belonging, as to the provisions herein contained for enlisting of recruits, whether minors or of full age, and swearing and attesting such recruits, and for mustering and paying, and as to the provisions for the trial and punishment of officers and soldiers who shall be charged with mutiny and desertion, or any other of the offences which are by this Act declared to be punishable by the sentence of a court martial, and also as to the provisions which relate to the punishment of persons who shall conceal deserters, or shall knowingly buy, exchange, or otherwise receive any arms, medals for good conduct or for distinguished or other service, clothes, military furniture, or regimental necessaries from any soldier or deserter, or who shall cause the colour of any such clothes to be changed, or who shall aid in the escape of a prisoner from a military prison, or who shall introduce forbidden articles into such prison, or shall carry out any such articles, or who shall assault any officer of such prison, and also as to the provisions for exempting soldiers from being taken out of Her Majesty's service for not supporting or for leaving chargeable to any parish, any wife, or child, or children, or on account of any breach of contract to serve or work for any employer, or on account of any debts under thirty pounds in the said islands.

*Time for which Mutiny Act in force (b).*

110. This Act shall be and continue in force—

Within Great Britain from the twenty-fifth day of April one thousand eight hundred and seventy-seven inclusive until the twenty-fifth day of April one thousand eight hundred and seventy-eight;

and shall be and continue in force within Ireland, and in Jersey, Guernsey, Alderney, Sark, and Isle of Man, and the islands thereto belonging, from the first day of May one thousand eight hundred and seventy-seven inclusive until the first day of May one thousand eight hundred and seventy-eight;

and

(a) Mutiny Act, 3.

(b) Mutiny Act, 110.

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and shall be and continue in force within the garrison of Gibraltar, the Mediterranean, and in Spain and Portugal, from the first day of August one thousand eight hundred and seventy-seven inclusive until the first day of August one thousand eight hundred and seventy-eight;

and shall be and continue in force in all other parts of Europe where Her Majesty's forces may be serving, and in the West Indies and America, from the first day of September one thousand eight hundred and seventy-seven inclusive until the first day of September one thousand eight hundred and seventy-eight;

and shall be and continue in force in India, and within the Cape of Good Hope, the Isle of France or Mauritius and its dependencies, Saint Helena, and the settlements on the western coast of Africa, from the first day of January one thousand eight hundred and seventy-eight inclusive until the first day of January one thousand eight hundred and seventy-nine;

and shall be and continue in force within British Columbia and Vancouver's Island from the date of the promulgation thereof in general orders there inclusive until the first day of January one thousand eight hundred and seventy-nine;

and shall be and continue in force in all other places from the first day of February one thousand eight hundred and seventy-nine inclusive until the first day of February one thousand eight hundred and eighty.

Provided always, that this Act shall, from and after the receipt and promulgation thereof in general orders in any part of Her Majesty's dominions or elsewhere beyond the seas, become and be in full force, anything herein stated to the contrary notwithstanding.



### Appendix, No. 3.

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PAPER handed in by Sir *Henry Thring*.

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*Note.*—This Paper is proposed to be substituted for Part 3 of Appendix, No. 1.

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Appendix, No. 3.

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## ARMY DISCIPLINE BILL.

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### PART III.

#### ARRANGEMENT OF CLAUSES.

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##### *Persons subject to Military Law.*

##### Clauses.

- 84. Description of persons subject to military law.
- 84*a*. Officers and men not belonging to regular forces how subject to military law.
- 85. Militia may be attached to regular forces.
- 86. Volunteers may be attached to regular forces.

##### *Trial and Punishment of Warrant Officers.*

- 87. Trial and punishment of warrant officers.

##### *Royal Marines.*

- 88. Application of Act to the marines.

##### *Special Provisions as to Reserve Forces and Militia.*

- 88*a*. Army reserve man absent without leave.
- 88*b*. Army reserve man deserting.
- 88*c*. Fraudulent enlistment as respects the auxiliary forces.

##### *Definitions.*

Interpretation of terms.

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### PART III. APPLICATION OF MILITARY LAW.

#### *Persons subject to Military Law.*

[*Note.*—These clauses are proposed to be substituted for Part 3 of the existing Army Discipline Bill.]

[The figures in brackets refer to the paragraphs of the Mutiny Act as numbered in the Paper submitted to the Committee, and intituled, "Application of the Mutiny Act and Articles of War."]

- 84.** The following persons are subject to military law, and this Act and any Articles of War made in pursuance thereof apply to such persons accordingly; that is to say,—
- Description of persons subject to military law.
- As to the regular forces—**
- (1.) All persons commissioned as officers in the regular forces, whether on full pay, half pay or retired pay; and (1.)  
Mutiny Act, 2 (1).
- (2.) All warrant officers and all persons attested or in pay as non-commissioned officers or soldiers in the regular forces; and (2.)  
Mutiny Act, 2 (2),  
(3.)  
Ibid (47).
- As to forces in India—**
- (3.) All persons not being natives of India, commissioned as officers in Her Majesty's Indian forces, whether on full pay, half-pay, or retired pay; and (3.)  
Mutiny Act, 2 (14.)  
Ibid (47).
- (4.) All persons, not being natives of India, being warrant officers or being attested or in pay as non-commissioned officers or soldiers in Her Majesty's Indian forces; and (4.)  
Mutiny Act, 2 (14).
- (5.) All persons, whether natives of India or not, belonging to Her Majesty's Indian forces who may be serving or hired to be employed in the artillery or any of the trains of artillery, or as master gunners or gunners, or as conductors of stores, or who may be serving in the department of engineers, or in the corps of sappers and miners, or pioneers, or as military surveyors or draftsmen, or in the ordnance or public works or commissariat departments; and (5.)  
Mutiny Act, 2 (14).
- (6.) All storekeepers and other civil officers employed under the Ordnance Department of the said Indian forces, and to all veterinary surgeons, medical storekeepers, apothecaries, hospital stewards, and others, serving in the medical department of the said Indian forces, and to all licensed sutlers, and to all followers in or of any of the said Indian forces. (6.)  
Mutiny Act, 2 (14).
- As to colonial and foreign forces—**
- (7.) All such officers and soldiers mentioned, and in pay, as have by order of Her Majesty been raised beyond the limits of the United Kingdom, and beyond the limits of Her Majesty's dominions in India, and are serving under the command of a commissioned officer of Her Majesty : (7.)  
Mutiny Act, 4.  
Article of War, 190.
- As to the reserve forces—**
- (8.) All men enrolled in the army reserve force, or enlisted in the militia reserve force— (8.)  
Mutiny Act, 2 (19).
- (a.) When called out for training or exercise; and
- (b.) When kept on duty having volunteered their services; and
- (c.) When called out for duty in aid of the civil power; and
- (d.) When called out on permanent service under Her Majesty's proclamation.
- As to the militia —**
- (9.) All persons receiving pay as members of the permanent staff of the militia : (9.)  
Mutiny Act, 2 (15).
- (10.) All persons commissioned or in pay as officers of the militia : (10.)  
Mutiny Act, 2 (1).
- (11.) All men enrolled in the militia : (11.)
- (a.) During the period of their being trained or exercised, either with their own regiments or with any portion of the regular forces, or otherwise; and (a.) Militia Act, 1875, 38 & 39 Vict. c. 63, s. 57.
- (b.) When attached to or otherwise acting as part of or with any regular forces; and (b.) Mutiny Act, 2 (16). 105, 2 (17).
- (c.) When embodied. (c.) Militia Act, 1875.
- As 38 & 39 Vict. c. 69, s. 57.

## Appendix, No. 3.

## As to the volunteers—

(12.)  
Mutiny Act, 2 (15).

(12.) All persons receiving pay as members of the permanent staff of any volunteer regiment:

(13.)  
Mutiny Act, 2 (18).

(13.) All officers of the volunteer forces, whether in receipt of pay or otherwise, during and in respect of the time when with their own consent they may be attached to or doing duty with any body of troops then subject to this Act, whether of the regular or auxiliary forces, or are ordered on duty by the military authorities; and

(14.)  
(a.) Regulation of the Forces Act, 1871 (34 & 35 Vict. c. 86, s. 9.)

(14.) All officers and men belonging to the volunteer forces:

(b.) Mutiny Act, s. 105.

(a.) During the period of their being trained or exercised with any portion of the militia or regular forces; and

(b.) When attached to or otherwise acting as part of or with any regular forces; and,

(c.) Volunteer Act, 1863. (26 & 27 Vict. c. 65, s. 23.)

(c.) When on actual military service.

(15.)  
By order of Committee.

## As to camp followers—

(15.) All persons not otherwise subject to military law who are followers of or accompany Her Majesty's regular forces or any portion thereof when such forces are employed on actual service.

## As to miscellaneous persons—

Mutiny Act, 2 (4), (5).

(16.) All persons in the recruiting service receiving pay (a), and all pensioners receiving allowances in respect of such service; and

Mutiny Act, 2, (6).

(17.) All persons who are or may be hired to be employed in the Royal Artillery or Royal Engineers; (b) and

Mutiny Act, 2, (6), (7).

(18.) All master gunners and conductors of stores; (c) and

Mutiny Act, 2 (9).

(19.) All officers and persons *not otherwise subject to military law* who are or may be serving in the commissariat and ordnance store departments: (d)

Mutiny Act, 2 (11).

(20.) All persons in the War Department, when serving with any part of Her Majesty's army at home or abroad, under the command of any commissioned officer; (e) and

Officers and men not belonging to regular forces how subject to military law.

**84 a.** When officers and men not belonging to the regular forces are subject to military law in pursuance of this Act, the Mutiny Act and Articles of War shall apply to such persons and men, and to the regiments to which they belong, in the same manner in all respects as if such officers and men were officers and men belonging to the regular forces, and as if the regiments to which such officers and men belong were regiments of the regular forces:

Provided that no man who does not belong to the regular forces shall be required to serve in any other manner than that in which he would have been required to serve if this Act had not passed.

Militia may be attached to regular forces.  
Mutiny Act, 104, p. 139.

**85.** Her Majesty may, by order of the Secretary of State, and subject to such conditions as may be determined by him, attach to any regiment of the army in the United Kingdom any regiment or regiments of militia, and the officers, non-commissioned officers, and men (including the permanent staff) of any such regiment or regiments so attached shall be deemed for all purposes to form part of the regiment to which they are attached: Provided that no person belonging to the militia shall be required to serve for a longer period, or in any other county than that during and in which he might have been required to serve, if this Act had not been passed.

Volunteers may be attached to regular forces.  
Mutiny Act, 105, p. 140.

**86.** Her Majesty may, by order of the Secretary of State, and subject to such conditions as may be determined by him, attach to any regiment of the army in the United Kingdom any volunteer forces, and the officers, non-commissioned officers, and men (including the permanent staff) of any regiment so attached shall be deemed for all purposes to form part of the regiment of the army to which they are attached: Provided that no person belonging to the volunteers shall be required to serve in any other manner than that in which he might have been required to serve if this Act had not passed.

*Trial and Punishment of Warrant Officers.*

Trial and punishment of warrant officers.  
Art. of War, 128, p. 345.

**87.** The provisions of this Act relating to the trial and punishment of offences shall (save where otherwise expressly provided) apply to a warrant officer, in the same manner in all respects as if he were a non-commissioned officer; provided—

(1). That

- (1.) That he shall not be tried by regimental court martial; and
- (2.) That he may be sentenced by a district or general court martial to be dismissed from the service or to be suspended from rank, pay, and allowances for any stated period, or to be reduced to the bottom or any other place in the list of the rank which he may hold, or to be reduced to an inferior class of warrant officer; and
- (3.) That if he was originally enlisted as a private soldier and continued in the service until his appointment to be a warrant officer (but not otherwise), he may be sentenced by a district or general court martial to be reduced to the ranks, or to be remanded to regimental duty in the rank held by him immediately before his appointment to be a warrant officer; and
- (4.) That the Government of any of the Presidencies in India may reduce any warrant officer serving in or belonging to such Presidency to a lower grade of warrant rank, or may remand any such warrant officer to regimental duty in the rank held by him immediately previous to his appointment to be a warrant officer; and
- (5.) For the trial of a warrant officer no more than two officers shall be taken from the regiment in which the warrant officer is serving, or be under the rank of captain;
- (6.) The president of a court martial for the trial of a warrant officer shall not be under the rank of a field officer, unless in the case where it is not practicable to procure a field officer for president;
- (7.) Warrant officer includes a hospital apprentice in India although not appointed by warrant.

#### *Royal Marines.*

**88.** This Act shall apply to Her Majesty's Royal Marine Forces when on shore, or on duty on board transport ships or merchant ships, or under other circumstances in which they are not subject to the Naval Discipline Act, 1866, in the same manner in all respects as if the said Royal Marine Forces were part of Her Majesty's Army, subject to the provisions following; that is to say,

Application of Act to the Marines.

See Marine Mutiny Act.

#### *Special Provisions as to Reserve Forces and Militia.*

**88a.** If any man enrolled in the army reserve without reasonable cause absents himself on two consecutive occasions when by the Acts governing such force, or the regulations made in pursuance thereof, he is duly ordered to be present at any place for the receipt of pay, he shall be deemed to be absent from his duty without leave, and shall be liable to be tried by a general or district court martial composed of officers of Her Majesty's army as a person subject to military law, and to suffer any punishment not exceeding imprisonment.

Army reserve man absent without leave.

**88b.** If any man enrolled in the army reserve without leave lawfully granted, or sickness duly certified, is absent when his services are required in pursuance of the Reserve Force Act, 1867, he shall be liable to be tried by a general or district court martial consisting of officers of Her Majesty's army as a person subject to military law, and to suffer any punishment not exceeding penal servitude.

Army reserve man deserting.

**88c.** A man shall be deemed to be guilty of fraudulent enlistment who, when belonging to the regular forces, without being duly discharged therefrom, enrolls or enlists himself in the militia or the reserve force, or in the permanent staff of any volunteer force; and a man belonging to the militia or any reserve force, or to the permanent staff of any volunteer force, shall be deemed to be guilty of fraudulent enlistment, who, without being duly discharged from the force to which he belongs, enlists or enrolls himself in the regular forces, or in the militia, or in any reserve force, or in the permanent staff of any volunteer force.

Explanation of fraudulent enlistment as respects the auxiliary forces.

A man guilty of fraudulent enlistment under this section may be tried by a district or general court martial consisting of officers of the regular forces and of the militia, or of either of such forces, and shall be liable to suffer any punishment not exceeding imprisonment: Provided that—

(1.) In the case of any man who confesses himself to be a militiaman, it shall be lawful for the Secretary of State to give such directions as may from time to time appear to him necessary, for placing such militiaman, instead of his being tried by court martial, under stoppage of 1 *d.* a day of his pay for 18 months; and

(2.) In the case of a militiaman belonging to the militia reserve who confesses himself to be a militiaman, it shall be lawful for the Secretary of State to give such directions as may from time to time appear to him necessary for placing such militia reserve man, instead of his being tried by court martial, under stoppage of 1 *d.* a day of his pay for 18 months as aforesaid, and also under a like stoppage of 1 *d.* a day for 240 days after the expiration of such 18 months:

(3.) The Secretary of State may, by such directions as aforesaid, declare the manner in which the stoppages made from the pay of a militiaman or a militia reserve man are to be applied, and further, whether the man is to be returned to the militia

**Appendix, No. 2.**

regiment or regiment of militia reserve from which he has deserted, or is to be deemed to be a soldier in the same manner as if he had not been a militiaman or militia reserve man.

**DEFINITIONS.***Clause to be substituted for Clause 117 of the Bill.***Interpretation of terms.**

In this Act, if not inconsistent with the context, the following terms have the meanings hereinafter respectively assigned to them ; that is to say,

**"Commander in Chief."**

The expression "Commander in Chief" includes the Field Marshal or other officer commanding in chief Her Majesty's forces for the time being :

**"Secretary of State."**

The expression "the Secretary of State" means such one of Her Majesty's Principal Secretaries of State for the time being as Her Majesty thinks fit to intrust with the seals of the War Department, and in default of the seals of the War Department being for the time being in the hands of any Secretary of State, then any one of Her Majesty's Principal Secretaries of State :

**Active service.**

The expression "on active service" as applied to a person subject to military law means whenever he is attached to or forms part of a force which is engaged in operations against the enemy, or is engaged in military operations in a country or place wholly or partly occupied by an enemy, or is in military occupation of any foreign country :

**"Enemy."**

The expression "enemy" includes all armed mutineers, armed rebels, armed rioters, and pirates :

**"Regiment."**

The expression "regiment" includes corps :

**"Volunteer forces."**

The expression "volunteer forces" includes the yeomanry cavalry and the Honourable Artillery Company of London :

**"Officer."**

The expression "officer" includes every person subject to military law who is a commissioned officer of Her Majesty :

**"Soldier."**

The expression "soldier" includes non-commissioned officer and any other person for the time being subject to military law who is not an officer :

**"United Kingdom."**

The expression "United Kingdom" includes the Channel Islands and the Isle of Man and the islands thereto belonging :

**"Prison."**

The expression "prison" means any military or other prison, gaol, house of correction, bridewell, or penitentiary :

**"Governor."**

The expression "governor" means any gaoler, keeper, or other chief officer of a prison :

**"Military decoration."**

The expression "military decoration" means any medal, clasp, good-conduct badge, or decoration :

**"Military reward."**

The expression "military reward" means any gratuity or annuity for long service or good conduct ; it also includes any good-conduct pension and any other military pecuniary reward :

**"Oath."**

The expression "oath" includes affirmation in cases where an affirmation is by the law of England allowed instead of an oath.

## Appendix, No. 4.

**PAPER** handed in by Sir *Henry Thring*.

**D R A F T**

### Appendix, No. 4.

OF A

# B I L L

**FOR**

**Bringing into FORCE and continuing for a YEAR the ARMY DISCIPLINE  
Act, 187 .**

WHEREAS the raising or keeping a standing army within the United Kingdom of Great Britain and Ireland in time of peace, unless it be with the consent of Parliament, is against law :

And whereas it is adjudged necessary by Her Majesty, and this present Parliament, that a body of forces should be continued for the safety of the United Kingdom and the defence of the possessions of Her Majesty's Crown, and that the whole number of such forces should consist of

men, including those to be employed at the depôts in the United Kingdom of Great Britain and Ireland for the training of recruits for service at home and abroad, but exclusive of the numbers actually serving within Her Majesty's Indian possessions :

And whereas no man can be forejudged of life or limb, or subjected in time of peace to any kind of punishment within this realm, by martial law, or in any other manner than by judgment of his peers, and according to the known and established laws of this realm; yet, nevertheless, it being requisite, for the retaining Her Majesty's forces in their duty, that an exact discipline be observed, and that soldiers who mutiny or stir up sedition, or desert Her Majesty's service, or are guilty of crimes and offences to the prejudice of good order and military discipline, be brought to a more exemplary and speedy punishment than the usual forms of the law will allow :

Be it therefore enacted by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows :

1. The Army Discipline Act, 187 , shall become and shall be in force as respects al Duration of Army  
persons subject thereto for the time hereinafter mentioned ; that is to say, Discipline Act,  
187

**(1.) Within the United Kingdom and the Channel Islands:**

From the \_\_\_\_\_ day of \_\_\_\_\_  
to the \_\_\_\_\_ day of \_\_\_\_\_

(2.) In all places without the United Kingdom, from and after the receipt and promulgation thereof in general orders.

187 " **2.** This Act may be cited for all purposes as "The Army Discipline Annual Act, Short title of Act.



**I N D E X .**

**TO THE**

**R E P O R T**

**FROM THE**

**SELECT COMMITTEE**

**ON**

**MUTINY AND MARINE MUTINY**  
**ACTS.**

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*Ordered, by The House of Commons, to be Printed,  
26 July 1878.*

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I N D E X.

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Illustration of the latitude under the present Act in respect of punishments during war, witness merely advocating a continuance of the same elasticity in making provision for the punishment of any offences that may be committed; subject that is, to the general limit in the Act, *Carey* 248-263. 273-275.

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Observations with reference to the difference in the scales of punishment in time of peace and of war; impossibility of dispensing with the power of flogging when in presence of the enemy, *Duke of Cambridge* 1328-1330. 1339—Strong impression that the severity of the punishments in time of war in foreign armies is very much in excess of our own, *ib.* 1330.

See also *Active Service. Articles of War. Commander in Chief. Courts Martial. Punishments.*

**War Department.** Statement as to the War Department not being responsible for the Army Discipline Bill in its present shape, and as to witness not having had time to examine it in detail, *Duke of Cambridge* 90-92. 102. 130-133.

See also *Consolidation and Simplification.*

**Warrant Officers.** Provisions of Army Discipline Bill relative to the trial and punishment of warrant officers, *App.* 160.

**Witnesses (Courts-Martial).** Explanation in connection with Clause 62 of the Army Discipline Bill, which gives the necessary statutory powers with respect to witnesses, *Sir H. Thring* 1066-1068.





I N D E X

TO THE

R E P O R T

FROM THE

SELECT COMMITTEE

ON

MUTINY AND MARINE MUTINY  
ACTS.

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*Ordered, by The House of Commons, to be Printed,  
26 July 1878.*

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# R E P O R T

FROM THE

SELECT COMMITTEE

ON

## INDIAN NATIVE TROOPS (TRANSPORT AND EMPLOYMENT ABROAD);

WITH THE

PROCEEDINGS OF THE COMMITTEE.

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*Ordered, by The House of Commons, to be Printed,*  
*29 July 1878.*

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*Ordered*,—[Monday, 22nd July 1878]:—THAT a Select Committee be appointed to inquire into the Cost of the recent movement of Her Majesty's Indian Troops from India to Malta, and to report in what respects, if any, the arrangements for employing European and Indian Native Troops together, outside the limits of India, require modification.

Select Committee nominated—[Tuesday, 23rd July 1878]—of—

Sir George Campbell.	Mr. Richard Power.
Sir John Hay.	Colonel Hayter.
Mr. Childers.	Lord Burghley.
Sir Henry Havelock.	Sir Henry Wilmot.
Mr. Campbell-Bannerman.	Mr. Deedes.
Colonel Arbuthnot.	Mr. Fawcett.
Mr. Marten.	Lord Eustace Cecil.
Mr. Sampson Lloyd.	

*Ordered*, THAT the Committee have power to send for Persons, Papers, and Records.

THAT Five be the Quorum of the Committee.

THAT the Committee do consist of Seventeen Members.

*Ordered*,—[Wednesday, 24th July 1878]:—THAT Mr. Onslow and Sir Patrick O'Brien be added to the Committee.

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PROCEEDINGS OF THE COMMITTEE	- - - - -	p. iv

## R E P O R T.

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THE SELECT COMMITTEE appointed to inquire into the Cost of the recent movement of Her Majesty's INDIAN TROOPS from *India* to *Malta*, and to report in what respects, if any, the arrangements for employing EUROPEAN and INDIAN NATIVE TROOPS together, outside the limits of *India*, require modification ;—HAVE agreed to the following REPORT:—

THAT your Committee, having regard to the terms of reference, are of opinion that it would be inexpedient to proceed with the present inquiry at this period of the Session, and they recommend the re-appointment of your Committee at the commencement of the next Session.

29 July 1878.



## PROCEEDINGS OF THE COMMITTEE.

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*Monday, 29th July 1878.*

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### MEMBERS PRESENT:

Lord Eustace Cecil.  
Sir John Hay.  
Sir Henry Wilmot.  
Mr. Childers.  
Sir Henry Havelock.  
Lord Burghley.  
Sir Patrick O'Brien.

Mr. Onslow.  
Colonel Hayter.  
Colonel Arbuthnot.  
Sir George Campbell.  
Mr. Richard Power.  
Mr. Fawcett.

Lord EUSTACE CECIL was called to the Chair.

The Committee deliberated.

Motion made, and Question proposed, "That your Committee, having regard to the terms of reference, are of opinion that it would be inexpedient to proceed with the present inquiry at this period of the Session, and they recommend the re-appointment of your Committee at the commencement of the next Session"—(*The Chairman*):—

Amendment proposed, to leave out from the words "your Committee" to the end of the Question, in order to add the words "proceed to take the evidence immediately available on the first part of the Order of Reference"—(*Sir George Campbell*),—instead thereof.

Question put, "That the words proposed to be left out stand part of the Question."—The Committee divided:

Ayes, 6.  
Mr. Childers.  
Sir John Hay.  
Colonel Arbuthnot.  
Lord Burghley.  
Sir Henry Wilmot.  
Mr. Onslow.

Noes, 6.  
Sir Patrick O'Brien.  
Colonel Hayter.  
Sir Henry Havelock.  
Sir George Campbell.  
Mr. Fawcett.  
Mr. Richard Power.

Whereupon the Chairman declared himself with the *Ayes*.

Main Question put:—

*Resolved*, "That your Committee, having regard to the terms of reference, are of opinion that it would be inexpedient to proceed with the present inquiry at this period of the Session, and they recommend the re-appointment of your Committee at the commencement of the next Session."

*Resolved*, "That the above Resolution be the Report of the Committee to the House."

*Ordered*, To Report.

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R E P O R T

FROM THE

SELECT COMMITTEE

ON

INDIAN NATIVE TROOPS  
(TRANSPORT AND EMPLOYMENT  
ABROAD);

WITH THE

PROCEEDINGS OF THE COMMITTEE.

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*Ordered, by The House of Commons, to be Printed,  
29 July 1878.*

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321.

*Under 1 oz.*











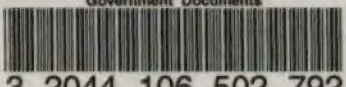












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